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BRUSSELS - JERUSALEM

Conflict Management and Conflict Resolution in Divided Cities

A Comparative Research Project

General editor

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BRUSSELS-JERUSALEM: FROM CONFLICT TO COMPROMISE

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PREFACE

This report is the outcome of a conference organised by the Centre for the Interdisciplinary Study of Brussels held in December 1996. The purpose of the conference was to discuss theoretical aspects of the concepts of sovereignty and identity and to analyse political culture and political strategies, both in Brussels and Jerusalem. Another objective was to evaluate the institutional system in Brussels in view of the basic mechanisms of co-operation between - and autonomy for the two communities that take up residence in the Belgian capital. Our main concern was to find out if and how the Brussels institutional model can inspire a solution for Jerusalem's problem of 'cohabitation'.

Scholars from a variety of disciplines associated with the Vrije Universiteit Brussel (VUB) and the Israel/Palestine Centre for Research and Information (IPCRI), in co-operation with the Université Libre de Bruxelles (ULB) and the Facultés Universitaires Saint-Louis (FUSL) delivered papers at the conference, for the greater part based on original research. The research itself was effectuated during the whole year of 1996, in close co-operation with all research partners involved in the comparative research project Brussels-Jerusalem: Conflict Management and Conflict Resolution in Divided Cities, financed by the European Union. A broad spectrum of points of views and theoretical lines of approaches made the conference discussions all the more lively and interesting.

Even though one year of research does not allow us to exceed the boundaries of theoretical exchange largely and discussions remain in many respects inconclusive, we feel confident that the importance of the issues at stake amply justifies to represent the contributions in report form.

Els Witte
Director of the Centre for the Interdisciplinary Study of Brussels

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its status as a Capital region within a fixed territorial area. But at the same time this bilingual region was recognised as part of the two major communities in Belgium. Since 1989, the two communities share power in the capital region and work together on regional matters such as urbanism, economy and energy. However, with regard to education, cultural matters and health care, both communities have their own institutions and benefit from a high degree of autonomy.

For the IPCRI-delegation, visiting Brussels provided an opportunity to acquaint themselves with the institutional mechanisms developed in the Brussels Region. In this context, contact was laid with researchers at the Vrije Universiteit Brussel (VUB). After these first contacts, co-operation was renewed in December 1994, when a Brussels delegation met again with Israeli and Palestinian researchers, this time in Jerusalem. The Belgians talked about Brussels, the Israelis and Palestinians talked about Jerusalem, and together we decided to set up a project that could help us to get to understand one another’s situation more thoroughly. Discussing and reflecting upon conflict and conflict management, co-existence and power sharing, the role of culture and identity, ... It seemed to us we had a valuable and useful basis to work on. Thus, the project for a comparative research Brussels-Jerusalem came into being.

Besides the institutional aspects such as sharing the same city space, other questions related to political science, sociology, and other social sciences did not seem to be of less relevancy and importance. Some of these questions can be read as follows: ‘How do power relations influence the political struggles between two communities?’; ‘What is the role of political elites in the process of conflict management and resolution?’; ‘What strategies were and are developed by the different communities and what is their purpose?’; ‘How do different communities interact with one another?’; ‘How do they define themselves?’; ‘What is the role of ‘national’ or ‘ethnic’ identification in inter-community relations?’; ‘What is the impact of intra-community cleavages?’; ‘How should we understand the influence of international components on the relationship between the two communities in Brussels?’; ‘What is the importance of international factors in Jerusalem?’; ... These and similar questions have informed the project.

The thus conceived interdisciplinary team of researchers hoped to get the opportunity to try to unravel some of the issues raised. A research team from several Brussels universities, guided by the VUB Centre for the Interdisciplinary Study of Brussels, was crystallised. The team believes it has some expertise to offer, to analyse together with a parallel team of Israeli and Palestinian scholars, set up under the aegis of IPCRI, what political options and strategies might stimulate in the quest for conflict management and co-existence in the Israeli-Palestinian conflict. It is our hope that some of the Brussels mechanisms might prove their usefulness in stabilising relationships in Jerusalem.
The three main purposes of this project can be defined as follows:

1) Understanding one another’s situation and analysing similarities and differences in both areas of conflict;
2) Evaluating the Brussels model. An in-depth study of the political structures adopted for Brussels would allow us to find out how the structural options taken, have played a role in the appeasement of ‘bi-communitary’ relations in the capital;
3) Trying to find out in what way the Brussels experience of ‘bi-communitary’ appeasement may help in the future disposition and administration of Jerusalem, and in the achievement of peaceful co-existence between its various populations.

The Jerusalem/Brussels Research Project appears to be fitting well into the European Union’s Mediterranean policy to support peace, stability, security and socio-economic development in the region. With the support of the European Commission, this project was started in October 1995. Actual research started in January 1996. One year later, the research results were presented and discussed at a seminar in Brussels. The final results are now presented in this volume.

Jerusalem is still far from reaching a solution and it is evident that this research cannot offer a clear and simple answer to the problems under consideration. What we will do is share our reflections and hope that some of them might turn out to be useful in the search for peace, for there can be no doubt that any discussion concerning new policies informing Israeli-Palestinian relations, will have to face the issue of Jerusalem.

Jerusalem’s importance for both parties is well known. The quest for a peaceful co-existence in the city will require the willingness of both parties to bridge the gap between their conflicting positions, needs and interests. Since the peace process in the Middle East is still in progress, it seemed only appropriate to explore in a joint effort the possibilities for peace through co-operation and dialogue. The initiators of the project were convinced that Brussels could be a useful point of reference. The study of its historical and political backgrounds might highlight roughly equivalent conditions in Jerusalem, and a solution elaborated in the Belgian case could inspire similar efforts in Israel and Palestine. We continue to hope that the project bears relevance to the matter in hand and will prove its significance, even in times when the peace process seems to be in jeopardy.
2. Synopsis of the research results

2.1. Institutions of co-existence in Brussels: a description and evaluation

In a first part of this volume, space has been dedicated to a thorough analysis of the legal status of Brussels. Mechanisms of co-operation and compromise in Brussels with their checks and balances, minority protection, and cultural autonomy features, are analysed in articles by De Mol (ULB) and Van Ypersele (FUSL).

Brussels’ institutional structures and their peculiarities are described in detail by Jacqueline de Mol. An overview of the Regional and Community Authorities in the Region of Brussels-Capital, with the reason for their existence, with their functioning, competencies and composition, allows for a better understanding of the extremely complicated model of balanced power relations between both communities and of the guarantees for the Flemish minority in the capital. Brussels obtained its status as a Capital region within a fixed territorial area, but at the same time, this bilingual region was recognised as part of the two major communities in Belgium. Since 1989, the two communities share power in the capital region and work together on regional matters as urbanism, economy and energy. However, in matters of education, culture and health care, both communities have their own institutions and benefit from a high degree of autonomy.

Elsewhere, De Mol elaborates on the mechanisms of co-operation developed in the federal state of Belgium. The reforms of 1980 and 1988 established various co-ordination mechanisms in national, regional and community issues. These aimed at preventing conflicts that could arise from the incoherence existing between the norms adopted by the different entities. De Mol explains how these mechanisms, which were developed to maintain the federal balance between the Regions and Communities, risk to be diverted from their primary function; in practice, they are not always used to reach common objectives, but to solve political conflicts between the different federal entities and to assert their will to increase their autonomy.

In another contribution, De Mol presents an analysis of the financing mechanisms that have been developed for the Brussels Capital Region. She reports on the viability of today’s financial system for the Brussels-Capital Region and analyses the structural weaknesses of this financial system. Since the methods of financing which are at the disposal of the Regions are inadequate for the specific problems of the Brussels-Capital Region today, a reform of the current system seems advisable, if not inevitable.

Other authors go further into details concerning the Brussels institutional mechanisms, the particularities, the efficiency and deficiency of the system. The compromise between the two logics ruling the Brussels institutional model, is the subject of a detailed analysis by Joël van Ypersele (FUSL). The system of competencies attributed to the Community bodies at once respects the need for autonomy of each Community, and prevents a cleavage within the Brussels population. By avoiding a territorial delimitation of the Community’s legal authorities in Brussels, the system prevents the crystallisation of clear-cut identities or the
reinforcement of the ‘ethno-linguistic’ split on the level of the population. The individual citizen’s affiliation to one or the other community has not been officialised thanks to the absence of the notion of sub-nationality. Consequently, all Brussels’ inhabitants have free access to the institutions of their choice. However, on a political and institutional level, and in response to the claim for autonomy in cultural matters, health care and education, a division between both communities has been introduced. Hence, in the bilingual territory of Brussels-Capital, the Communities are competent as to those institutions established on that territory that can be considered to belong exclusively to one or the other community (with minor exceptions). At the same time, the electoral system in Brussels is based on a linguistic division: it prohibits bilingual lists and clearly identifies the linguistic background of a candidate. However, each citizen is free to cast his vote for any list he elects, regardless of its linguistic colour. Within the political society, a cleavage has thus been institutionalised.

Van Ypersele also analyses the political representation of Brussels’ citizens within their respective Community bodies. He explains how each community in Brussels is linked with its fellow community in Flanders and Wallonia through a system of political representation within several bodies of these Communities. However, major differences between Flemings and francophones in terms of the political representation of their Brussels’ counterparts result from basically divergent visions concerning the Brussels reality. Flanders has primarily always claimed to be a community of which the Dutch-speakers in Brussels are part and parcel. This explains the Flemish reticence towards accepting Brussels as a third region, that is still part of political reality. Contrarily, Wallonia and francophone Brussels have always proclaimed the dominating position of the regions over the communities and they continue to do so.

Van Ypersele further examines the specific type of institutional autonomy granted to each community in the capital. He describes the competencies of the COCOF (Commission Communautaire Française) and the VGC (Vlaamse Gemeenschapscommissie), the respective community bodies for the French- and Flemish-speaking communities in Brussels and explains the asymmetry in their competencies. Finally, the author evaluates the Brussels system, and the elements that contributed to the model as it is today. Its relevance for the Jerusalem question is qualified: major differences separate the two situations. He concludes that the stability of mixed institutions in Jerusalem will depend upon the goodwill of the two (future) states to work together and develop policies of common interest.

Another important feature of the Belgian system in general and of the Brussels institutional model in particular, is an option to protect the position of the minority against the domination of the majority, both on a federal and on a Brussels regional level. The mechanisms developed for the protection of the linguistic minority in Brussels (with its Flemish-speaking minority) and in its periphery (with its francophone minority) are an example of application of the principle of minority rights on the micro-level. Van Ypersele identifies the relation between majority and minority in Brussels and in the peripheral communes and relates this to the historical and institutional developments in the country in general, and in Brussels in particular.
Power-sharing mechanisms characterise the Brussels Regional as well as its local institutions. Van Ypersele also tackles the question of representation of both communities at the local level: Flemings and francophones voiced in this regard opposing opinions. Yet a compromise was reached. The author explores the institutional mechanisms that allow the Flemish-speaking minority in Brussels to develop its network of institutions in community matters, and criticises the situation of the French-speaking minority in the periphery. He concludes his paper with a presentation and evaluation of the linguistic regime in Brussels and in the so-called facilitietengemeenten (municipalities of the Brussels periphery, that are located in Flanders and where the French-speaking minority enjoys a number of linguistic rights). What could be the relevance of these mechanisms for Jerusalem? Van Ypersele points out that the present system for the protection of minorities in Brussels has been more the product of a pragmatic process of negotiations and power relations than of an idealistic reflection over the protection of the rights of minorities.

2.2. The sovereignty question

Studying the propositions about the future of Jerusalem, one is struck by the crucial importance of the concept of sovereignty. Indeed, the sovereignty issue has been the core of the academic and political debate over the legal status of Jerusalem in international law - as well as in practical politics. Many disagreements threaten to subvert the negotiations on the permanent status of Jerusalem before it even started. The disagreements encompass matters related to the question of sovereignty over the holy City. Already in IPCRI's first international Israeli-Palestinian academic seminar about the future of Jerusalem (1993), Gershon Baskin stated clearly that: 'The central question and quandary regarding the future of Jerusalem is found in the link between sovereignty and territory'. He therefore suggested to examine the meaning of sovereignty in greater depth.

Because the sovereignty question is clearly one of the principal difficulties in negotiations in Jerusalem and because the Belgian experience shows great inventivity in materialising sovereignty with regard to Brussels, this concept has been studied by several authors. Doctrinal discussions over the meaning and content of the sovereignty concept and the changing nature of sovereignty make an analysis of this issue all the more interesting as well. For most jurists the concept of sovereignty remains the decisive characteristic allowing to separate the State from other public and private entities. Generally, this characteristic is described as the quality specific to state power, to be supreme and independent. However, an important recent trend of the theory of law denies this idea of qualitative difference between the state and other political collectivities based on sovereignty. State power is then defined less absolutely in terms of quantitative differences in the degrees of centralisation of power.

Without tackling the controversy mentioned above in detail, the sovereignty concept is accepted as a paradoxical concept, as judicial reality one time confirms, another invalidates it. The relativity of the concept should therefore be kept in mind.
The analyses written by the Brussels-Jerusalem team in this regard are of particular importance to the understanding of the particulars of the Brussels model and to the exploration of the possibilities for peacemaking in the Middle East. If the Israeli and Palestinian ‘nations’ consider the sovereignty they each claim on the territory of Jerusalem as an unlimited self-determination power, exclusive and indivisible, it will be impossible to reach an agreement. However, as already mentioned, new and multilayered definitions of sovereignty have been developed.

Both Hugues Dumont (FUSL) and Rotem Giladi (IPCRI) explore the changing nature of the sovereignty concept and try to get to its present meaning. Their point of departure is the observation that the definition of the concept as an exclusive and indivisible power over a well defined territory corresponds to an outmoded view. In order to understand the changing nature of sovereignty, both authors develop their analysis from a different but complementary point of view. Dumont chiefly analyses the sovereignty concept through the theory of the state and of constitutional law. Giladi approaches the changing nature of sovereignty referring to international law.

Giladi reviews the historical origins of the sovereignty concept and focuses on its current meaning. He analyses some of its constituent elements, especially where these relate to territory. He points out that the significance of the sovereignty concept in international law is declining. One recent development affecting the transition in the concept of sovereignty leads him to examine the notion of ‘self-determination’. Other types of limitations concerning the absolute character of sovereignty have to do with the structure of power in some democracies, and especially in federal states. He elaborates on a set of terms that allow him to describe different models of sovereignty, such as ‘dual’, ‘divided’, ‘partial’, ‘shared’, and ‘scattered’ sovereignty and others. Together with a review of the variety of existing models of sovereignty in different territories, Giladi questions the relevance of the sovereignty issue for a solution over Jerusalem. Sovereignty as understood today has such a wide conceptual and practical range, that its old definition in international law as a concept dictating cogent requirements, ought to be put aside during future negotiations on Jerusalem. Indeed, the outcome may well be a novel ‘Jerusalem model’ that does not accommodate any of the existing models of sovereignty.

The Belgian experience seems to present a twofold interest in the course of research on the present meaning of the sovereignty concept and of its possible contents and applications. Studying the Belgian institutional developments, Dumont reconstructs the evolution of the sovereignty concept from a unique and indivisible sovereignty to a relative and interdependent autonomy. After a presentation of the concept of sovereignty in general, its application in the European context is explored. Like Giladi, Dumont also underlines the relativity of state sovereignty in the international arena. The European integration confirms the deep relativity affecting state sovereignty today. On top of that, Dumont describes the meaning of the sovereignty principle in the Belgian state. Here, the concept of sovereignty turns out to be totally paradoxical. This paradox lies essentially in a disjunction between the formal and material aspects of sovereignty. The practical exercise of sovereignty of the state results indeed in a division of sovereignty between multiple authorities within
the state. The author concludes that the Belgian State seems even less sovereign because of its basically dual structure. Formally, the state is still sovereign and the Communities are only federal entities, but politically the state has to a large extent lost all capacity of autonomous decision without consensus of the Communities. Dumont therefore describes the Belgian institutional system as one hovering between federalism and confederalism and points out what the key role of Brussels is in the process of redistributing state powers in favour of the Communities. Inspired by the French theoretician on the State Olivier Beaud, the author proposes to define the Belgian system as a ‘pluri-national federation’.

However, it seems very doubtful whether such an option would be possible in the Israeli-Palestinian case. The absence of a minimal degree of sociological homogeneity, the lack of a minimal desire to be one nation and to live together, and the lack of perceived common interests, impose the conclusion that the model of Brussels cannot be directly transposed. The Belgian experience shows that a gradualist approach toward sovereignty does offer possibilities to satisfy the desire for autonomy of the two rival collectivities within a common political framework. The author however, states that only with reference to negotiations, which should bring together two sovereign states, and a mutual agreement, where both States decide to limit the powers they demand on the territory of Jerusalem, could the Brussels model offer some elements of inspiration. Working on concessions with regard to so symbolic an issue as Jerusalem will only be possible after both parties have strengthened their sovereignty and overcome crucial internal divisions within the nation.

Dumont’s and Giladi’s papers clarify that modern ‘sovereignty’ implies significant limitations on the ability of states to act completely independently. Though international law is still ruled by the principle of the autonomy of the will of the State, political practice reveals that ‘external’ sovereignty can only mean a ‘basically relative’ independence. Moreover, recent developments in the concept of sovereignty seem to confirm that sovereignty is not indivisible: two or more authorities may enjoy limited, relative, differential or functional sovereignty over certain areas, groups or resources.

The application of the principle of sovereignty in Brussels and the conceptual peculiarities of autonomy and territory in the Belgian capital region are the subject of a more detailed study by Philippe Gérard (FUSL). After clarifying the ambiguity included in the concept of sovereignty, he explains the application of the concept of autonomy with regard to the division between regional and community authorities in Brussels.

Based on De Mol’s detailed description of the Brussels institutional model, Gérard then presents his analysis referring to the concepts of sovereignty and autonomy. Claims for autonomy, to which the Belgian legislative authorities have answered during the constitutional reform of 1970, resulted in the differentiation between region and community. This reform reflected a compromise between competing interests. Regional autonomy corresponds mainly to the demands of Wallonia. In a unitary state, in which Flanders was occupying more and more a
structural majority, Wallonia requested economic autonomy, in order to resolve more autonomously specific problems the region was confronted with. By contrast, community autonomy corresponds to the cultural and linguistic demands of the Flemish Movement, which was looking for means to counteract the domination of a French-speaking elite. As far as the creation of the Brussels Capital Region is concerned, the separation region/community has imposed a distinction between the regional authorities and the authorities of the communities. Gérard explains the particularities of the Brussels model: the organisation of powers in the Brussels region forms a compromise between a centripetal logic, which corresponds to the wish for autonomy of the Flemish and French-speaking communities of Brussels, and a centrifugal logic, which acknowledges the need to attribute regional powers to the Brussels Regional bodies. From a constitutional point of view, it is undeniable that the diversity of the Brussels institutions and their competencies generates an unprecedented complexity. However, this same complexity also permits to represent comprehensively at once the unity of the Brussels region, the necessary co-operation between the two communities that are living together, and the differences between them.

Gérard approaches this region/community dualism with a dose of criticism. The will to provide political autonomy to communities defined on linguistic and cultural criteria corresponds to the national principle, as defined by Ernst Gellner, one of the most famous theoreticians of nationalism. According to the latter, this principle wrongly implies the existence of a pre-existing homogeneous cultural community with a priori fixed limits. Moreover, it requires a coincidence between the cultural community and the political community, rendering thereby all divisions problematic. On the other hand however, democracy requires the respect and protection of different cultures. This justifies, among other things, the creation of mechanisms trying to protect culturally defined communities, in order to distribute more evenly the possibilities to participate in the collective power. The political organisation of the Brussels Region tries to combine the national principle with democratic requirements by guaranteeing egalitarian participation of Flemings and francophones in those powers exercised in common, and by also promising autonomy in community powers. Gérard concludes that the Brussels institutions can certainly be an instructive reference for Jerusalem, as an example for of a possible method to share power between two communities within one urban agglomeration.

In elaborating his analysis, Gershon Baskin (IPCR) takes as a starting point the assumption that the resolution of the Israeli-Palestinian conflict will result in the creation of a sovereign Palestinian State developing peaceful relations with the State of Israel. The main challenge today is to find a mechanism of agreements that will effectively allay Israel’s fears regarding a sovereign state on the one hand, and to allow the Palestinians to achieve full state sovereignty, on the other. In addition, agreements and mechanisms have to be created that will allow Jerusalem to be the national capital of two states, while guaranteeing that the presence of two sovereigns in one city will not create a divided city. Learning from the Brussels experience, Baskin draws attention to need to gradually reach compromises and creating
confidence. He believes that once certain principles are adopted, an incremental approach could begin to lay the framework for a final status solution. A first step towards a peaceful settlement for Jerusalem is the adoption of an Entrenched Basic Law to the effect that Jerusalem will remain one open city with guaranteed free movement. Once such a Law is adopted, a new legal mechanism, defined as ‘trans-consensual’ constitutional law, is required to steer the difficult future negotiations. By turning elements of treaties into Constitutional law and guaranteeing that the treaty is respected, such a mechanism would strengthen the possibility for trust and confidence-building between the sides. Recognising the limitations of sovereignty today is an important step in the process of being able to reach an agreement. Baskin defines the main concept employed in ‘trans-consensual’ constitutional law as one where each side voluntarily limits its jurisdiction and/or sovereignty over specific areas or functions. This has been tried in the framework of (con)federal arrangements but never between sovereign states. In seeking possibilities for co-existence, based on mutual and parallel limitations of power, checks and balances, and functionally or territorially defined competencies, the Brussels model can be a source of inspiration. Baskin assumes that an agreement based on parity, mutuality, reciprocity and parallel limitations, stands a chance of being acceptable, because each side’s compromises will be in some way mirror similar compromises of the other side.

An exercise comparable to Baskin’s has been undertaken by François Tulkens (FUSL). Through critical analysis of the legal status of Brussels and Jerusalem, he attempts at defining the elements of comparison and divergence between both cases. The main goal of his paper is to answer the question if and how the legal system and its solutions applied to Brussels can be useful to resolve the Jerusalem question. To deepen this question, Tulkens sees the need to examine first of all specifically why and to what extent Brussels is a ‘model’, and secondly to try to transpose some of the Brussels’ legal solutions to Jerusalem, particularly in view of the propositions made by Baskin. Tulkens identifies the elements that contributed to the relative success of the Brussels institutional structures, relating to historical and institutional factors and to the mechanism of checks and balances. However, he also points out what the deficiencies are of this Brussels ‘model’. Of course, no one would imagine mechanically transposing this model to Jerusalem. Yet the author estimates some principles and elements of the Brussels solution might prove their usefulness in future negotiations. In any case, the history of Brussels has showed that solutions are not laid down in advance but that they are the result of a process of trial and error throughout time.

2.3. Conflict and conflict-management

2.3.1. Two cases of conflict

Most larger urban concentrations in the world can be labelled as ‘mixed’ cities, with a high degree of heterogeneity. Today, all urban environments of any significance bear a multicultural character, where a heterogeneous population comprises various social and ‘ethnic’ groups, which reside side by side. This is true of
Brussels (with some 30% non-Belgians) and of Jerusalem, as well as of many other mixed cities. What singles out both our cases from this general picture, is the fact that they belong to a select category of deeply polarised cities whose polarisation reflects a division on the state level. Both Brussels and Jerusalem are characterised by a division in two population groups, who are defined in ‘national’ terms. Both in Brussels and in Jerusalem the division between the communities is visible in the public space and needs to be taken into account in the course of political action. In both cases, socio-political and cultural life is organised on a dual basis: each group has its own institutions and networks, with - though in a varying degree - little common ground between them.

However, in Jerusalem segmentation cuts much deeper in the city’s texture than it does in the Belgian capital. First of all, Jerusalem is an extremely (though informally) segregated city, where contacts between Israeli’s and Palestinians are mostly limited to business and bureaucracy. Moreover, the extreme power asymmetry between Israel and the Palestinians mirrors the unequal power relations on a broader ‘interstate’ level. On both levels, the Palestinians find themselves in a situation of inequality and dependency. The dominant Jewish majority benefits from both legal-political power and economic supremacy. In the Brussels case power relations between both communities are much more balanced. Here, these relations between both communities are the obverse of the power relations on a national level: the minority in the capital is a majority on a national level, and vice versa. This situation allowed for bargaining and compromise.

While it is clear that the two cases, Brussels and Jerusalem, are vastly different, the research project attempted to elucidate the less obvious similarities between them. In fact, in both cities, society’s organisation responds to a logic of duality among ‘national’ or ‘ethnic’ lines. This sets the socio-political reality in these two urban settings apart from that of other multicultural or heterogeneous cities. In sociology, this phenomenon is usually referred to as ‘plural’ societies.

The question whether both Brussels and Jerusalem fit in a common kind of typology is one Joël Kotek (ULB) and Michael Romann (IPCRI) have tried to answer. Kotek chooses to label Brussels and Jerusalem as ‘frontier cities’ or even ‘frontier zones’ - cities that are not only polarised on an ethnic or ideological basis, but that are disputed because of their location on fault-lines between ethnic or ideological wholes. Both Brussels and Jerusalem are repositories of community conflicts on broader national levels. Kotek explains how the location of frontier-cities turns them into a subject of opposing and mutually exclusive claims over sovereignty among communities divided along ethnic or national lines. He qualifies these frontier cities in terms of dynamic spaces, with a precarious balance between the majority and minority ethnic group. Moreover, cities that are located on a cross road between two cultures, share the paradoxical quality of being at the same time a crux of conflict and a meeting place between the two groups.

Michael Romann goes into discussion with Kotek and questions his conceptual framework. Romann prefers to label Jerusalem and Brussels as ‘divided’ or ‘polarised’ cities, Brussels being a mild case and Jerusalem being an extreme case of
polarisation. A number of variables seem significant for classifying cities as to their degree of polarisation: the historical context of inter-group contacts, elements that define and determine group boundaries, relative proportions and patterns of distribution in demographic, economic and territorial terms, cultural diversity and the degree of social separation, power disparities, etc. Based on such variables, Romann develops a comparative and analytical framework to classify different cases of polarisation. Application of this framework to the two cases under consideration leads him to the conclusion that Jerusalem and Brussels share mainly their disagreement about the symbolic ethnic identity of the capital city. Related to this is the importance attributed to issues of population proportions, and aspects of territorial presence and boundaries.

Though to an outside observer Brussels and Jerusalem seem extremely different and hardly comparable, the typology both authors propose does point out a number of fundamental reasons justifying a meaningful comparison between Brussels and Jerusalem. Both share a number of essential features typical of plural or polarised urban cities, and both belong to a category of cities segmented along the ethno-national fault line between different communities sharing the same territory. Moreover, both cities are reflections and symbols of a struggle between these different communities on a broader national or interstate level. The two cases can be considered both as a microcosm of a broader community struggle and as a repository of specific conflicts on a local level. Therefore, both play a highly symbolic role in the inter-community struggle. Brussels, capital of a bilingual state and at the same time of the Flemish- and French-speaking community, is the focus of communal divisions expressed in ongoing antagonism and conflict. Jerusalem, in its much harsher way, is also situated at the focus of the Israeli-Palestinian conflict, and constitutes perhaps its sharpest and most intense expression. This makes compromise all the more difficult, because neither party is willing to give up its claim over a city it is so emotionally attached to.

The analysis of both authors is also instructive when considering where both cases essentially differ. Whereas in Brussels political struggle today is more a question of identity and balanced power relations between both communities, the basic issue in Jerusalem is mainly a question of legitimacy and sovereignty, as manifested by aspects of direct political and territorial control. However, the contributions on the legal status of Brussels and on the concept of ‘sovereignty’ indicate that ‘sovereignty’ and ‘legitimacy’ also were important issues that had to be dealt with in the Belgian experience with community-conflict. As such, the Belgian experience might be revealing in thinking over solutions for Jerusalem.

2.3.2. Elites in Urban Conflict

The position of community elites vis-à-vis their respective constituencies, but also vis-à-vis each other, constitutes an area of possible cross-community integration. The position of and interrelations between elites is a vital ingredient in any form of consociational conflict regulation mechanisms.
East and West Jerusalem élites, their legitimisation, their protection of the interests of their constituencies in the context of the struggle over Jerusalem, and their role in identity formation and conflict management, are mapped by Bernard Sabella, Joab Elion, and - for the foreign élites - Robin Twite (IPCRI). The comparison between those élites presupposed that in fact the same definition of ‘élites’ is valid in both societies, and that they indeed defend the interests of their constituencies - presuppositions that are problematised in the papers. The authors also attempt to answer the question whether trans-élite contacts have reached a critical threshold enabling a qualitative leap in urban inter-community coexistence.

In fact, although Arab élites in Jerusalem have undergone significant changes in recent history, long continuity in the stratification and legitimacy on the Palestinian side, has existed. Traditional Islamic élites often trace their lineage back to the 11th century Muslim reconquista under Salah ed-Din, or even earlier to the original 7th century conquest by ‘Umar. This led to a class of religiously sanctioned landlords residing in town. Jerusalem’s central role in Palestine in both religion and politics predisposed Jerusalem’s ‘great families’ to become the prime exponents of a nationwide Palestinian leadership. However, their position was adversely affected by the Palestinian exodus of 1947/1948 (which started as an exodus of élites), Jerusalem’s subsequent eclipse in favour of Amman, and finally Israel’s post-1967 occupation. As traditional families increasingly lost their capacity to protect the interests of their clients, a new, and better educated PLO-related elite, often bearers of a more modern outlook, took over the political institutions and a host of NGOs. The transition can be documented through changes in institutions such as the National Guidance Committee, the Islamic Council, Chamber of Commerce, etc. However, the transformation has been gradual and is far from complete. Scions of traditional families are still prominent in charitable, social, and educational institutions, and in commercial entrepreneurship. An informal three-way division of labour has developed among Jerusalem Palestinians in relation to their leadership - in religious matters, the traditional élite still holds sway, in political matters, members of top families can no longer ‘automatically’ assume leading roles without parallel political legitimisation. However, in a number of more immediately practical fields such as health, employment, social security, etc. neither the old elite nor the new can any longer provide the necessary patronage. In these fields, lower class Palestinians have therefore for pragmatic reasons increasingly fallen back on Israel’s more rational-legal bureaucracies.

The reality is very different on the Israeli side of Jerusalem, where a modern Jewish presence is only slightly over one century old, and current élites are an almost accidental outcome of clashing and intermingling stratifications stemming from vastly differing places and times. West Jerusalem’s élites are a subspecies of the more general Israeli genus. Israel was constructed as a new and fast-changing society without a tradition of a single and commonly accepted elite. Israeli élites are the product of successive waves of Zionist immigration. Some, particularly early, migration-movements where much more successful than later ones in establishing for themselves a near-unassailable position. Thus the descendants of East European
immigrants from the first two decades of the 20th century evolved into a superior ‘caste’, an amalgamated political-economic-ideological elite that ran the state and civil services, trade unions and the Jewish Agency, the military, etc. - through tightly organised bureaucratic means, and reproduced themselves through ‘old boys networks’. Israel, and Jerusalem, evolved a form of consociational arrangements mediated primarily through political parties. A special role is played by Jewish religious élites, which also gained for themselves a pivotal position in political life. However, this system has been overhauled in recent decades. It has been contested by later immigrant strata and their offspring, particularly Oriental Jews, and affected by the emergence of parallel élites rising through social and political movements, the media, the judiciary, high finance, academia, and other channels. With a somewhat other distribution than the nation-wide average - viz. the increasing clout of religious élites -, the same elite structure continues to predominate over West Jerusalem.

With regard to contacts with the Palestinians, Eilon concludes on the basis of interviews, that in theory the political elite seems to be best placed to exploit such contacts for the benefit of better understanding between the two sides. Some representatives of the political and civil service, military and security élites, as well as the Mayor’s Advisor for Arab Affairs, indeed established contacts with members of East Jerusalem’s Palestinian élites. However, such contacts have remained surprisingly limited, and assumed much more often a dominator/dominated form than that of a more authentic elite/élite relationship. While more promising rapports have been built by ‘alternative’ or ‘marginal’ élites of left wing intellectuals, their impact has remained extremely limited: by and large the Holy City continues to be deeply divided, and its multiple division is sustained by Jerusalem’s Jewish élites’ widespread ignorance and indifference about their Palestinian counterparts. Eilon hypothesises that these attitudes are the outcrop of an implicit Israeli Jerusalemite understanding of being ‘complete’ in their ‘Jerusalemiteness’ without regard or need for a Palestinian other, and of psycho-social mechanisms allowing suppression of the consciousness of dominating another people with whom they share the same city.

Finally, the special role played in Jerusalem by diplomatic missions, Churches and other religious groups from abroad, and the whole gamut of NGOs, is highlighted. The disproportional influence of these external factors on life in Jerusalem, is the combined result of the religious centrality of the Holy City, and the semi-colonial historical background of Palestine in modern times. Robin Twite (IPCRI) shows how these ‘foreign’ or ‘international’ élites are fulfilling functions at a political and social level. In contrast to expatriate communities in other divided cities such as Brussels, international factors have been quite instrumental in shaping the city’s social and cultural life. Conversely these factors could not escape themselves its intense politicisation and involvement in conflict. The present diplomatic community, successor to the consuls whom the Great Powers accredited in the Holy City in the last century in the framework of their imperialist rivalries, have seen their impact slowly erode as they found themselves in juridical limbo after Israel’s occupation of East Jerusalem. Their presence has, however, remained symbolically significant as an expression of the international community’s wish to contest the legitimacy of Israel’s
claim to exclusive sovereignty over the whole city. Practically they are important as
listening stations for Western governments and channels for aid to the Palestinians.

These latter functions are equally (and sometimes more successfully) fulfilled by
a network of international NGO's, which operate solely in Palestinian Jerusalem, and
whose personnel tends to identify with the Palestinian cause. Finally, the Christian
churches have over the ages maintained a multifarious presence in Jerusalem, most
visibly at the Holy Places. However, churches have on more than one occasion also
exerted political influence, taking generally a more pro-Arab line. The influence in city
affairs of the Greek Orthodox Church has been constrained by the traditional
animosity between the Greek-speaking high clergy and its Arab lay community. More
directly influential is the Roman Catholic Church, which is the custodian of important
holy places, but also operates a small Arab church. The Vatican has recently
upgraded and improved its relations with Israel, and remains a junior player in
Jerusalem. In general, however, Christians tend today to keep a low profile and their
effect on Israeli-Palestinian inter-community relations in Jerusalem, while of a
mitigating nature, has remained limited.

2.3.3. Informal co-existence arrangements in Jerusalem

Amidst the social landscape of political and communal strife in Jerusalem that in
many aspects seems to stand for little parallelism with Brussels, there are two
questions that do allow for meaningful comparison. Firstly, in the midst of their fierce
national, religious and cultural conflict for control over and identity of the city, Jews
and Arabs in Jerusalem have developed a set of completely informal and very partial,
yet workable, formulas to deal with a host of secondary issues. The 'solutions' in the
field can either prolong and exacerbate, or mitigate community conflict; they can
prevent or, on the contrary, facilitate conflict management and resolution. Obviously,
the ad hoc reached modus vivendi arrangements, concern issues such as economic
interactions neither side considers vital. Still, they may imply useful lessons for the
broader overall solution the city urgently needs.

Secondly, on the basis of the legal and political aspects of Brussels' constitutional arrangements, with their implication of mutually agreed limitations on
each side's sovereignty, suggestions may be made for a 'Jerusalem model'
incorporating some lessons referring to the Brussels model.

Bernard Sabella and Michael Romann co-author a study of practical co-
habitation arrangements arrived at despite the predominant conflict logic in Jerusalem.
Adding much previously unknown detail, they focus on four areas: the religious
status quo, the position of Palestinian Jerusalemites living outside the municipal
boundaries, the use of Hebrew and Arabic in the city, and practical co-operation
arrangements between parallel professional associations in the Israeli and Palestinian
sectors of the city.

Israel and East Jerusalem's Muslim and Christian religious authorities have been
rather successful in elaborating guidelines that allow for practical co-existence within a
wider framework of non-recognition. It proved easier to safeguard the autonomy of
Christian churches in matters of the personal status of their believers and control of their holy places, as Israel has continued to respect the 'status quo' arrangements that have been in force since the mid-19th century. From their side, these churches have found ways of indirectly registering personal status changes with the Israeli authorities. The problem is considerably more complicated in the case of Islamic holy places and awqaf, in particular the Haram al-Sharif (Temple Mount) on which also Judaism lays claim. Hence, politically motivated 'misunderstandings' have erupted more than once. Still, until Israel's unilateral opening of the Hasmonean tunnel adjacent to the Haram in September 1996, tolerable working relationships existed between the Muslim religious authorities and the Israeli State.

Jerusalemites living outside the municipal borders constitute another instance of pragmatism triumphing over dogmatism. Thousands of Palestinians have left the city, partly because of express Israeli pressures. Palestinians maintain that this emigration, resulting foremost from housing shortages for Palestinians, poses a constant threat to Jerusalem's Arab and Muslim character. However, a substantial portion of these 'exiled Jerusalemites' continue to live in close proximity to the city, and succeed in maintaining functional - economic, social, and educational - links with Jerusalem. Most of them also succeed in keeping to their 'permanent resident' status papers (the 'Jerusalem ID' card), and many continue to pay municipal taxes, social security dues, and continue to use Israeli health facilities in Jerusalem.

Language remains a clear (though not the primary) community-marker in Jerusalem. Its use provides an instructive counterexample to the Brussels situation. Language reflects Israel's dominant position in Jerusalem but, again, reality is less clear cut than an unmitigated conflict model might lead one to believe. Street signs and other official announcements appear generally bilingually in both Hebrew and Arabic in Palestinian neighbourhoods, mono-lingually in Hebrew only in Jewish West Jerusalem. Tax forms, telephone bills, etc. are printed sometimes bilingual, sometimes in Hebrew only, leading to inconvenience for Arabic-speakers (and again, the need for interpreters). On the other hand, municipal ordinances requiring Hebrew for shop and business signs are generally not enforced in the Arab parts of the city. Since this is not experienced as a real threat to Israeli overall control, practice is left to individual preferences and market dictates.

Among both the Jewish and Arab community, there is willingness, although limited, to learn the other's language. However, this tendency is much more obvious on the side of the Palestinian minority, as it has more utilitarian incentives to acquaint itself with the medium of the Hebrew-speaking majority than vice versa.

Finally, there appears to be a substantial and growing co-operation across the communal divide between Israeli and Palestinian firms and professional associations. This deviates from the official line of non-recognition and non-co-operation. This is glaringly visible in evidence between travel agencies, hotels, and other institutions dealing with tourism to Jerusalem - a vital source of income for many Jerusalemites. In spite of the fact that all services require licensing by the Israeli Ministry of Tourism, and notwithstanding restrictive and sometimes arbitrary Israeli practices policies such as non-promotion of tourism in East Jerusalem, and refusal to license Palestinian
guides, East Jerusalem companies have succeeded in maintaining a substantial segment of this market. Though relations do exist between Palestinian travel agencies and Israeli counterparts, and with Israeli authorities, they tend to stay on both formal and practical level. Low key forms of co-operation also exist between other professional groups such as lawyers, health professionals.

What all these informal arrangements demonstrate, is the high degree of pragmatism that accompanies the Palestinians’ principled stance on Jerusalem, and a lesser but still noticeable flexibility on the Israeli side. This is also clear from the elicited answers of a series of questionnaires the authors distributed among Palestinian Jerusalemites.

Individual contacts at the municipal level, detailed in the study of Sarah Kaminker (IPCRI) and Daoud Kuttab (IPCRI) on the basis of a series of interviews, complement Sabella and Romann. Attempts to protect Palestinian interests through the activities of Arab ‘middlemen’ channelling Palestinian contacts with the Jerusalem municipality, provide a useful example of the potential and the limitations of cross-community participation within a joint political field. Municipal operations touch the life of every Palestinian family in East Jerusalem: municipal taxes are levied on all residents (indeed Palestinians are assessed at proportionally higher sums); education is near-universal, and most children attend the Israeli-controlled public school system; finally, in the field of housing, most Palestinian dwellings remain substandard and overcrowded: any renovation or new construction necessitates lengthy bureaucratic procedures - if permits can be obtained at all. In fact, restrictive licensing in matters of housing is a prime tool for keeping the Jewish-Arab demographic ratio at 72:28. On paper, there exists a directive that one quarter of all city budgets must go to providing services for the Palestinian population. In practice, municipal services for Arab Jerusalemites are much lower both in quantity and in quality than those enjoyed by Jewish neighbourhoods. Hence the need for Palestinian intermediaries. The Jerusalem municipality employs special Palestinian ‘buffer’ personnel to service the Palestinian population. These provide information, absorb and deflect the Arab public’s anger in the face of grossly discriminatory practices, and in individual cases plead for them with their (invariably Israeli Jewish) superiors. Besides, Israel allies with the Arab population through local chieftains who in rare instances may also provide ‘special protection’ for their clients. This patronage system guarantees that Israel’s policy (obviously not designed to serve Palestinian interests) is implemented with a minimum of collective Palestinian resistance. Contact between Israeli policy makers and their Arab ‘clients’ is minimal, and Palestinian frustration finds its outlet in ineffective verbal protests to foreign media, consulates, NGO’s, or the UN. It is evident that the ‘strategy’ of individual accommodation (if strategy is the right term here) is both demoralising for the Palestinian collectivity as a whole, and at loggerheads with other Palestinian strategies. In fact, it fits Israel’s declared aims. However, going along with unfortunate reality, and individual efforts to make the best out of a bad situation, are widespread among Jerusalem’s Palestinian community. The authors reach the conclusion that no serious progress can be in sight as long as Palestinian political participation in municipal decision taking cannot be made
politically viable.

2.4. Political strategies and political culture

A broad set of questions deals with comparing institutional structures in Jerusalem with those in Brussels that have been condensed above. Of course, there is a marked difference here, in that in Brussels a complex model for 'bi-community' co-existence, joint administration and conflict adjudication has been in operation since 1988. The operations can be empirically evaluated against a set of criteria inherent in the model. In Jerusalem, on the other hand, conflict is the norm, and is only to some extent held in check by external constraints but not by any common agreement for conflict resolution. Hence, there is no workable 'Jerusalem model' to compare with yet. The Jerusalem situation is precisely characterised by the absence of consensually accepted compromise arrangements. Here exist neither agreement on the vexing sovereignty question, nor checks and balances between the communities, nor guarantees for protection of the minority community. There is not even agreement about what constitutes the warring groups and their boundaries, nor about where exactly the object of their antagonism, Jerusalem, begins or ends. Jerusalem, whose name is associated with 'City of Peace', stands as an emblem of strife and mutual non-recognition between Israel and Palestinians. The Oslo peace process has begun to melt down this non-recognition on the national macro-level, yet community conflict continues to inflict its harm on the micro-level of the controversial city. Therefore, this part of the research is necessarily less comparative than others. It tries to answer questions about the political aims of the communities in conflict, the political strategies that are used to advance these aims, and how these strategies are present themselves through the élites of either side.

2.4.1. Political Culture as a Factor of Conflict and Conflict Resolution

If one studies the attainment and the practice of the compromise solution for Brussels, it is impossible to isolate the subject from an analysis of the general features of the Belgian political system. In many respects, the Brussels model mirrors, albeit in a very specific way, a number of appeasement techniques which have been or still are used in the major cleavages dividing the Belgian res publica. Jeffrey Tyssens (VUB) focuses on these features of Belgian political culture. He develops an analysis of the features of the Belgian political system, with the combined concepts of 'pillarisation' (verzuiling) or 'vertical pluralism' on the one hand and of consociational democracy on the other. Consociationalism and pillarisation have generated a very specific style of day-to-day conflict management, raising a number of omnipresent features of political praxis to a high level of refinement and efficiency. Tyssens not only offers a definition of these concepts, based on the work of the Belgian sociologist Jaak Billiet and the Dutch political scientist Arend Lijphart, but analyses them in their practical application. He offers insights in the way pillarisation and consociationalism have determined the decision making processes in Belgium and have helped pacify ideological cleavages and class conflicts. However, in linguistic matters things proved
to be more complicated. Disciplining mechanisms, which functioned reasonably well on other matters, proved far less efficient here, although appeasements did work in the consociationalist sense. Eventually, the traditional parties succeeded in keeping the linguistic and communal situation in check, and they were able to apply typically consociational techniques. The Brussels case is definitely a crafty example of such a type of compromise.

The paper of Kris Deschouwer (VUB) presents an analysis of the ‘pacification’ mode of decision-making in the Brussels Region. Deschouwer shows how the Brussels institutional model mirrors the minority-majority relations on the federal level. He explains how autonomy is granted to the communities within the Brussels region, in what way consensus functions on the executive level of the Region, and how bi-communitary matters are subject to the veto power of the Flemish minority. All the well-known elements that underlie the Brussels arrangements: technicality, avoidance of debate on large principles, ideological vagueness and judicial complexity, discretion, subsidiarity, consensus seeking etc., (analysed by Tyssens for the Belgian macro-level), are visible when going over the Brussels case with a fine tooth comb.

Apart from the political realities which may or may not render the Brussels ‘mechanics’ of conflict management and resolution irrelevant to Jerusalem, inhospitable political cultures may also impede any transposition of the Brussels model to Jerusalem, if such an action were deemed desirable. Political culture can be defined as a group’s deeply rooted - and therefore relatively stable - pattern of orientations directed toward political action. While Jerusalem’s political culture seems prima facie to lack those values of tolerance, legitimacy of compromise, gradualism and non-violence, which were foundational to the Brussels model, a reconstruction of other Jerusalem-specific modes of political thinking, feeling and doing might uncover a common language that can yet prove helpful in improving community relations. Manuel Hassassian (IPCR) and Daniel Elazar (IPCR) set themselves to this task. In their article, they scrutinise elements of Israeli and Palestinian national and specific political cultures of the city for their relevance to conflict pacification.

Elazar’s analysis focuses on commonalities in Jewish and Arab identification with Jerusalem. These include a shared sense of deprivation, a shared sensibility towards the city’s religious significance, an acceptance of the need for pragmatic co-existence between national ambitions and informal accommodation practices, and a joint concern with political and social exclusiveness, as well as with preserving the religious character of the city against more profane pursuits. Some of these commonalities may serve as a basis for communication and sharing (others, however, may exacerbate conflict...)

Hassassian focuses on the basic uniformity of the evolving Palestinian political culture across different geographical contexts. Most striking is the transformation of how pre-existent political attitudes - in particular since the Intifada - by a nascent Palestinian civil society, to create a strong commitment to democratic values. However, this democratic longing is still an ideal typical project, and clashes with both authoritarian and patriarchal tendencies within traditional Arab society, and with
undemocratic tendencies in current Palestinian political practice. The growth of a
democratic Palestinian political culture goes hand in hand with an inclination toward
pragmatism and away from a certain doctrinal dogmatism that marked it in earlier
stages. Still, a wide gap subsists between western concepts linking citizenship with
democracy, and the neo-patriarchal Arab approach that views the individual/nation
nexus less through the lenses of rights and obligations than through that of a
reciprocal organical connection. In most Arab countries, neither economic
liberalisation, nor grassroots social mobilisation have yet resulted in political
democratisation. Against this unpromising backdrop, however, Palestinians stand out
as a positive exception according to Hassassin. Historical experience predisposed
them, more than other Arab peoples, to democracy and secularism. A commitment to
developing democratic institutions pervades today, at least on a declarative level,
Palestinian political discourse. However, as the author warns, democracy will not
survive in Palestinian milieu if it restricts itself to elections and parties, which are
already relatively well developed. This requires no less than a thoroughgoing
attitudinal anchoring through restoration of faith in civic society, as a counterweight
to the autocracy of the Palestinian-state-on-the-way. The fate of the peace process
and Palestinian democracy appear to be closely interdependent. Only progress in the
former will allow successful integration of the Islamic trend and the development of a
viable economic infrastructure, two crucial preconditions for democratisation. On the
other hand, only the consolidation of democratic attitudes and institutions can bolster
the legitimacy of the political process. Hassassin concludes that East Jerusalem is a
potent example of Palestinian political discourse contextually embedded in its political
culture.

2.4.2. Strategies of conflict in Jerusalem

In Jerusalem the question is posed as to how the absence of mutually agreed
solutions affects the quality of life in the city, and the natural periphery which for
political reasons has been cut off from it (we leave aside the broader question of how
the festering Jerusalem question ‘helps’ to sustain, reproduce, and escalate the overall
Israel-Palestinian and Jewish-Arab conflict). Here it appears that the two main parties
have used very different strategies to reach their goals - and with contrasting results.

In the case of Jerusalem, it appears that Israel has been quite successful at
formulating and gaining domestic consensus for its aims and strategies, and has
succeeded in enforcing a uniform and consistent policy. Palestinian policies, by
contrast, have on the whole been much less clear, and are plagued by internal
divisions.

Jerusalem has been a controversial and much-coveted city for as long as its
history is recorded. As a city holy to the three great monotheistic religions, Judaism,
Christianity, and Islam, Jerusalem stood often at the centre of their momentous
clashes. In the 19th and 20th century, it became the object of fierce struggle between
Jews and Arabs, a struggle that was fought by political, military and demographic
means. Jerusalem has had a Jewish majority since the late 19th century, and its
geographical expansion beyond the walls of the Old City during late Ottoman and British Mandatory times was also primarily a Jewish affair. However, in spite of its ideological 'surplus value', Jerusalem did not originally stand in the centre of Zionist or Palestinian national aspirations, nor was it the main focus of Jewish immigration to the Land of Israel. In fact, in the first half of our century, it attracted only a moderate number of newcomers, a disproportionate number of them religious Jews who were not nationally motivated. Jerusalem remained a provincial and rather liveable town. In 1947-1948, in contrast to the UN resolution calling for its internationalisation, the Israeli War of Independence led to the partition of the city between Israel and Jordan. Arabs living in West Jerusalem fled to the Jordanian-held East sector; while Jews living in the Old City left for Israeli-controlled West Jerusalem. Jerusalem split into two cities, each of which developed separately of the other. Although the new state of Israel proclaimed West Jerusalem its capital and moved there most of its national institutions, territorially, socially and economically Jerusalem remained in fact peripheral to the Jewish State; in parallel, East Jerusalem remained meanwhile stagnant, discriminated against in favour of Jordan's East Bank capital Amman. This situation prevailed until the June 1967 - Six-Day War - when East Jerusalem came under Israeli control along with the rest of the West Bank. Since then, the Holy City has become increasingly central in the struggle between Israel and the Palestinians, constantly increasing its significance as a major prize for either party.

From 1967 onward, Israeli and Palestinian strategies in and about Jerusalem have had mirroring goals, but strikingly dissimilar results. Both sides view Jerusalem as the symbol par excellence of their national sovereignty - to the extent that they have trouble imagining their own collective existence without Jerusalem as their capital. For both sides, Jerusalem's national value remains inextricably linked to its religious significance, Jewish in the case of Israel, predominantly Islamic in the Palestinians. Both sides have framed their claim on the city in mutually exclusive terms, at least initially, and have fashioned their policies against each other no less than in favour of their own side. However, Israel is in a clearly domination position, while the Palestinians have been forced into a more defensive one. Israeli-Palestinian struggle over Jerusalem is played out incrementally, and generally non-violently (although it is often accompanied by the threat of open violence - a threat not seldom realised). The following paragraphs focus on the non-violent strategies of each side.

Israel's post-1967 policy in Jerusalem is relatively well documented and presented systematically in a paper by David Kling (IPCRI). Shortly after the Six Day War, Israel annexed East Jerusalem, redrawing and expanding its municipal boundaries in such a way as to maximise its territory while keeping the number of Arabs at a minimum. This led to the exclusion of some Palestinian villages that had historically and geographically been connected with Jerusalem. After this reshuffle, the formally unified city counted 264,000 inhabitants - 198,000 Jews, all living in West Jerusalem, and 66,000 Palestinians, all living within the expanded borders of East Jerusalem in 1967. Since then, Israel's strategies in Jerusalem have focused on creating facts on the ground with an eye to 1) obtaining recognition, both
domestically and internationally, for its position of united Jerusalem as the undivided and eternal capital of Israel and of the Jewish people; 2) consolidating Israel's territorial hold so as to preclude any strategic challenges to its rule; and 3) strengthening Jewish demographic predominance, both as a security precaution and in order to transform Jerusalem's character. These aims have been quite consistently pursued in close co-operation between the Israeli government and the various branches of its bureaucracy, the Jerusalem municipality, and a variety of Zionist and Jewish NGO's.

Since 1967, Israel has consistently aimed at maintaining the demographic ratio between Jews and Arabs at 72:28. It tried to offset the Arab population's higher birth-rate by actively fostering Jewish immigration and settlement in the city, and by a variety of restrictive policies aimed at keeping Palestinian numbers low and at encouraging them to leave Jerusalem. Israeli territorial expansion in East Jerusalem was accomplished by a set of ethnically differentiated zoning policies. Most of the Palestinian-owned land of East Jerusalem was temporarily frozen as environmentally protected 'green zones' where Arab-owners were prohibited from building. This resulted in severe housing shortage on the Palestinian side. Israel subsequently expropriated a substantial portion of this land for the construction of new and exclusively Jewish neighbourhoods. Nowadays these district (or 'settlements' in the Arab perspective) lie as a pair of giant piners around the Arab neighbourhoods, preventing their further growth and compartmentalising them. This uneven expansion has been compounded by social and economic measures geared to benefit the Jewish population to the detriment of the Palestinians.

These Israeli-imposed policies have been quite effective. By 1995, 170,000 Israelis ('settlers' from the Palestinian point of view) were living beyond the old armistice boundaries in annexed East Jerusalem, where they now slightly outnumber Palestinians. In the whole city, Jewish demographic preponderance stands at over 70%. An indeterminate number of Palestinians, possibly as many as 80,000, have left Jerusalem.

In spite of wide ranging political differences, all successive post-1967 Israeli leaderships, whether Labour or Likud, were united in their determination to make Israel's grip on Jerusalem irreversible. In the quarter century since Israel gained de facto control over the whole of Jerusalem, the city's 'Israelisation' has proceeded apace. Israel has succeeded in creating domestically and until now undisputed 'national consensus' around the issue of Jerusalem. And although its policies have provoked widespread and oft-repeated international censure, their effect have remained limited. Not even the 1987-1993 Palestinian popular uprising, the Intifada, succeeded in breaking the momentum of Israeli colonisation in the capital. Neither has the Oslo process between Israel and the Palestinians, which started in 1993, deflected Israel from its course in Jerusalem. As a matter of fact, the 1992-1996 Rabin/Peres government combined its efforts in the peace process with a process of an active continuation of the 'judaisation' process of Jerusalem, planning a number of Israeli satellite towns as a 'Greater Jerusalem' ring around the city. Meanwhile, frequently imposed closures in reaction to terrorist attacks by Palestinian opponents.
of the peace process have actually accelerated Jerusalem's progressive isolation from the surrounding Palestinian West Bank.

Palestinians have defensively reacted to Israel's Jerusalem policies from a position of weakness, in what has essentially amounted to a rather unsuccessful holding operation. Israel has offered Jerusalem's Arab inhabitants the option of participating in Jerusalem's administration. Thus, long-standing Labour mayor Teddy Kollek developed in the 1980s a plan of devolution of authority to borough level, which, if implemented, would have empowered them on the local level. However, taking part in municipal elections and shouldering responsibility for running the city's affairs, would in Arab eyes have entailed indirect recognition of Israeli occupation - and was therefore rejected. Indeed, the same city that for Israelis is liberated and unified once and for all, remains under illegal occupation for the Palestinians (as well as for the whole Arab and Islamic world). This conceptual contrast has continued to inform Palestinian counterstrategies, as analysed by Zakaria al-Qaq (IPCRJ) based on original field research.

Al-Qaq's research directs attention to some interesting aspects. To begin with, Jerusalem has been relatively neglected by the Palestinian national movement, in spite of 'rhetorical' flourishes. The movement was contented to leave concern to al-Quds to pan-Islamic and Jordanian instances for a considerable period. In fact, there appears to be a broad parallelism in Jerusalem's move into the centre of Israeli-Jewish consciousness, and similar gains in its importance it registered on the Palestinian Arab side. Eventually the PLO took a greater interest in Jerusalem, but a specific Jerusalem Council came into being only in 1993.

Secondly, Palestinian attempts to impose a political presence in Jerusalem, once started, were two-pronged, confronting not just Israel's accomplished facts but no less Hashemite ambitions for the monopoly of representation of Arab and Islamic interests in Jerusalem.

Lastly, Palestinian political strategies (as distinct from acts of armed resistance against Israel's occupation) are a curious mixture of principles and pragmatic decision procedures. They consist of a combination of 1) a stringently enforced policy of non-recognition of Israel's annexation and non-co-operation with Israel on the official level, 2) attempts at defending Palestinian group rights through a series of little-known institutional initiatives and 3) tolerance for tactics of individual interests lying with the Israeli authorities (gliding imperceptibly into the collaboration zone). What all these methods have in common is their reactive nature.

Palestinian non-co-operation policy manifested itself foremost in the systematic boycott of Jerusalem municipal elections. The paradoxical result of Palestinian non-representation is of course that it also excludes them from the decision-making process, pre-empts the possibility of adequate protection of their interests, and leaves the field to more the extreme proponents of actively anti-Palestinian policies among Israelis. Initiatives for Palestinian participation in municipal elections, such as Hanna Siniora's in 1986 and 1993, were brutally nipped in the bud.

Attempts at safeguarding East Jerusalem's Palestinian Arab and Muslim identity found concrete expression in the struggles waged by institutions such as the Islamic
Committee, the Jerusalem Chamber of Commerce, the Jerusalem Electric Company, as well as in the tug-of-war that involved Palestinian schools, hospitals etc. In the 1990s, a more expressly political presence was added to these, through institutions such as the Orient House. Sometimes the Palestinians were successful, e.g. in preserving their jurisdiction over Muslim religious courts and the awqaf (religiously endowed real estate foundations) or in preventing Israeli excavations on Temple Mount (at least until recently). More often, however, their struggles ended either in some sort of truce, or Israel won the day. Hence, some Palestinian hospitals were closed, although a certain amount of Palestinian private schools maintained a far-reaching autonomy in determining their curriculum; and the fate of Orient House remains in limbo, etc. Palestinian efforts to bring about organisational and economic self-sufficiency were particularly marked during the Intifada, which practically undid Israel's imposed 'unification' of the city. Indeed, since 1988, most Israelis are afraid of walking in Jerusalem's Arab neighbourhoods. On the other hand, however, Palestinians have been staggeringly unsuccessful in preventing expropriations of their lands, the construction of all-Jewish neighbourhoods, etc. The low turnout in Jerusalem at the elections for the Representative Council of the Palestinian National Authority and its Chairman, in January 1996, was widely interpreted as another symptom of the weakening Palestinian hold on East Jerusalem.

In general, then, the effectiveness of Palestinian opposition to Israeli encroachment in Jerusalem has been marred by internal political squabbles. Because of its reactive nature, it stayed generally one step behind events, allowing Israel to dictate the agenda for the upcoming final status negotiations over Jerusalem.

2.5. The contrasting identities of two 'divided' cities

A last set of questions addresses issues of culture and collective identity articulating (or transcending) the divided city's segmented nature. How are Brussels' and Jerusalem's collective identities structured, how do they evolve, and how do they relate to the city's community conflicts and conflict resolution? At issue here are questions such as the boundaries and the cohesiveness of each (sub)community, the production of separate subjectivities, and the interrelationship between them. Indeed, next to power relations proper, it is the dovetailing of areas of (economic, residential, linguistic, lifestyle...) integration with areas of segregation, which determines the probabilities for the development of a city-wide 'super-identity' overriding the contradictions between its component sub-communities. Of course, it should be kept in mind that the main contradiction between identity groups sharing a common (oft disputed) territory in plural societies, is crosscut by other sub-identities. It stands to reason that the greater the liberty individuals in a divided city enjoy in combining different their affiliations, the more latitude there will be for developing inter-community conflict management and resolution.

Identity groups define their particularity in dual way - one time by expressing the values, memories, and other shared features, and another by emphasising how these differ from those of other groups. Territory is but one, though often crucial,
avenue through which groups express their specificity and proclaim their boundaries. However, the relationship between spatially defined and non-territorial factors in the identity of communities in conflict, plays itself out in contrasting ways in Brussels and Jerusalem.

Shlomo Hasson (IPCRI) has researched the identity/territory linkage in Jerusalem, where the collective identities of the constituent communities are much more strongly shaped by territorial conflict than in Brussels. Indeed, territory, the struggle to control it, and the efforts to stamp it with one’s own collective identity, characterise not just the predominant Israeli-Palestinian conflict over Jerusalem, but also a multitude of urban sub-community conflicts, three of which Hasson compares with the main Israeli-Palestinian ethno-national antagonism: viz. the cultural-religious conflict between secular and religious (particularly haredi, i.e. ultra-Orthodox) Jews; the socio-economic ethno-class conflict between poor Mizrahim (Oriental Jews) and their more affluent (often Ashkenazi) neighbours; and the environmental conflicts pitting residents of ecologically menaced neighbourhoods against public and private urban developers. In all these instances, Jerusalem group identities are formed, sustained, and expressed through territory.

This is most obvious for the main conflict between Israeli Jews and Palestinian Arabs. In fact, the Israeli-Palestinian struggle over Jerusalem is just a special case of the wider struggle between two ethno-national communities over one territory. I.e. territory is the object of the conflict, but neither of the two adversary groups defines itself own group in territorial terms (Israeli Jews variously - and polemically - define the boundaries of their community by religion, descent, national or cultural affiliation; similarly, Palestinian Arabs variously emphasise the pan-Arab (qawm), local (watan) or religious aspects of their group identity), although territory eventually becomes not just a strategic asset but also a symbol of the collectivity’s identity. With residential segregation in Jerusalem as complete as social separation (new Jewish neighbourhoods in East Jerusalem form a chequered pattern, but there are no ‘nationally’ mixed neighbourhoods), the chasm between Jews and Arabs is physical just as much as it is psychological and political - although the wall is invisible. The conflict proceeds very visibly by strategies of conquering and settling territory, and by counterstrategies of holding-on (sumud).

The intra-Jewish differences between Haredim and seculars in Jerusalem is only marginally less fierce. Although the aim here is not secession and national liberation but rather segregation along the lines of observant ultra-Orthodoxy’s specific cultural (dress, dietary, Sabbath rest, gender segregation...) codes, the means are in both cases similar: a form of territorial partition. Indeed, the Ultra-Orthodox are territorially concentrated along an axis radiating north-west from the city centre (including both existing and new neighbourhoods built specially for them), and impose conformity with their lifestyle wherever they achieve a majority. The Ultra-Orthodox’ higher birthrate, their increasing political clout, and the radical social consequences whenever a neighbourhood falls within their orbit, give the contest a desperate character. With only slight exaggeration, the struggle can be described as a house-to-house battle of territorial conquest. The major difference in conflict methodology is the relatively
non-violent character of the haredi-secular ‘war of attrition’. 2

Thirdly, the struggle of Oriental Jewish neighbourhood activists fighting for social equality and empowerment is essentially a class struggle with ethnic overtones for integration, not segregation. However, it cannot be divorced from territorial aspects, because Jewish indigence in Jerusalem is largely concentrated in a ‘belt of poverty’ along the former Israeli-Jordanian armistice line and along the city’s southern periphery. The run-down housing projects, where second-generation Oriental Jewish activists grew up, came to denote - as a perverse territorial metaphor of identity - their deprivation, alienation and discrimination. However, this movement has been largely absorbed and co-opted.

Lastly, environmental struggles form one more recent example of territorially defined struggles that impact on group identity. The lack of overall urban planning in Jerusalem, the relative scarcity of available land, coupled with an ever-increasing demand, and along with the dynamism of some interests business, have led to programs of large scale road development and massive residential, industrial and hotel construction, at the expense of the city’s few remaining green zones, of the small-town or village quality of life of quarters as yet untouched by the onslaught of modern metropolitan life, and in some instances of the real estate value of the properties envisaged. In a number of cases this has led to public protests, in which the threatened locales have begun to act as the focus around which a new group identity is shaping up. In this case the aim of group action is again integration, but of a more defensive type. A certain territorial consciousness or obsession may thus be posited to pervade a wide array of Jerusalem’s conflicts.

Several of the points raised by Hasson are taken up by Robin Twite (IPCRJ). Twite examines the impact of Jerusalem’s conflicted politics on the quality of its physical life and environment. As a matter of fact, Jerusalem’s architectural beauty, the city’s sense of unity, and its harmonious location in the Judean hills landscape complements its historical and religious values and adds to its world-wide attraction (as well as generating a valuable income from tourism to Israel’s second-poorest city). The Old City is a multilayered millennial complex in which a multitude of styles co-exists more successfully than the humans inhabiting them. The late 19th and 20th century New City owes its uniform and mellow character in no small degree to the enlightened administration of the British Mandate from 1918 to 1948. However, the division between 1948 and 1967, and the subsequent exacerbation of the Jerusalem conflict in one forcibly ‘united’ city, have by and large had negative effects. The rival ambitions of Israel and Jordan resulted in a split that was detrimental to the city’s quality of life. East Jerusalem stagnated. In West Jerusalem, hastily erected low quality suburbs on the armistice line, populated mainly by poor Oriental Jewish immigrants, sowed the seeds for severe socio-ethnic conflict in years to come. The wartime destruction (inter alia of the whole Jewish Quarter of the Old City), and the no man’s land rubble and barricades, were mended after 1967. But the construction of mass habitation blocks, dictated by Israel’s policy to bring maximal numbers of Jews to live in the city, has continued unabated in the past quarter century. Because of these policies and of the Palestinians’ natural growth, Jerusalem has substantially
expanded, and has in parts become an unsightly urban sprawl, which has essentially encircled or ‘eaten up’ surrounding Arab villages. True, various grandiose plans for turning Jerusalem into a modern metropolis, by razing the monuments of its past to make room for modern high-rises, have been abandoned for more sensible urban planning principles. In addition, Israeli rule over East Jerusalem has brought certain environmental advantages, and - at least on the Jewish side - quality of accommodation and amenities have drastically improved, politics continue to dictate Jerusalem’s planning policies. Still, Israel’s preoccupation with security and demography have more often than not had detrimental effects on the city’s visual qualities. Moreover, the hurried colonisation is often done with minimal regards for proper planning principles. The fact that the new Israeli neighbourhoods in East Jerusalem are built on Palestinian lands expropriated against the erstwhile owners’ will, has made them a source of communal conflict from their very beginning.

Ali Qleibo (IPCRI) in his contribution attempts to elucidate Jerusalem’s Islamic and Palestinian identity through historical reconstruction. He emphasises the city’s Arab continuity under the cloak of changing cultural modes, but no less the fact that tolerance of diversity is its hallmark. In the struggle of Palestinians to maintain their identity along with territorial rights, he discerns parallels with similar endeavours of Dutch- and French-speakers in Brussels. However, one major cultural-ideological difference with Brussels concerns the role of religion, which over-determines national conflict in Jerusalem to a degree completely unknown in Brussels. Less well known than the Judaic and Christian traditions, the strong link of Islam with al-Quds is based on Prophet Muhammad’s nightly journey to heaven from Jerusalem, and is underpinned in numerous hadith and traditions, some of which are recounted.

However, Palestinian identity in Jerusalem is founded on Arab ethnicity no less than on religion. The author posits a continuity of Jerusalem’s Arabity from antiquity over Christian Byzantine periods to Islamic and modern times. This essential continuity is expressed through the expansion of the concept of ‘Arab’ in Islam. It was precisely this perceived ethnic correspondence which facilitated the conquest and integration of Jerusalem in the Islamic empire, and its gradual (and incomplete) islamisation. Jerusalem neighbourhoods were originally not segregated along religious lines. The process of segregation took centuries, starting in the eleventh century with small groups of properties assigned to specific communities, and only later extending to entire quarters. As late as Mamluke and Ottoman times, Muslims were still living in what has subsequently come to be known as the Jewish Quarter - and vice versa. However, the traditional social structure of Jerusalem, which Qleibo understands as a rather harmonious whole, started to decay in the later 18th century, and was even more drastically affected in the 19th.

Conflicting aspirations and claims on Jerusalem have resulted in a religiocultural mosaic, particularly in the historic Old City, whose maze of alleys delimit a number of small residential units (harat), built on still-existing Roman-Byzantine ground plans and infrastructure. This institutionalised heterogeneity is much less in evidence in the new additions which have agglomerated into the current ‘Greater Jerusalem’. In fact, Jerusalem’s expansion has deeply problematised the identity issue
of Palestinian no less than Israeli Jerusalemites. Although in an allusive way, all Palestinians consider themselves metaphorically as Jerusalemites and have amalgamated its symbolism into national myth (just as happened on the Jewish side). On a more concrete level, Jerusalem’s recent history, the influx of Hebronites, the annexation and integration of nearby villages, etc., has seriously undermined the self-perception of the group that considers itself to be the only rightful heir to the title of Jerusalemite: ‘Arabs living within the precincts of the wall, led by their aristocratic elite, and their descendants.’ Qleibo analyses in a fascinating way the Palestinian social reality in the Old City (composed of small quarters based on, and living off, Islamic awqaf, or centred around Christian monasteries - deir).

Briefly, the collective identities of most of Jerusalem’s various communities seem to be sharply defined, leaving little ambiguity or slack; while some other sub-identities appear still in a flux, such as the ‘new’ Palestinian ex-villager Jerusalemites, or the ecologically defined groups in West Jerusalem, these do not cut across the main ethno-national divide. No indications are in evidence for a nascent Jerusalem ‘super-identity’ which both Jews and Arabs could share.

In this respect, the situation in Brussels is vastly different. The symbolical role of Brussels in the Belgian political strife between French- and Dutch-speakers has been the object of a second contribution by Joël Kotek. Kotek takes the concept of ‘iconography’, developed by Jean Gottmann, as a point of departure to analyse the position of Brussels and the ‘crisis’ of the Belgian nation. Iconography can be understood as the total sum of beliefs, symbols, images, ideas, etc. that form the heritage of a community and symbolises its unity. Kotek points out what the elements that have been fundamental in the build-up of a Belgian iconography. He concentrates in particular on the choice for French as the official language of the Belgian nation and on the role of Brussels as capital of the country and as the centre of political, economic and cultural life. The author evaluates the impact of the linguistic cleavage in Belgian society and questions recent developments concerning the Belgian iconography. He directs attention to ‘the slow disappearance of a Belgian iconography’ and tries to measure the consequences of this evolution. Due to the development of regional nationalism in Flanders and Wallonia and to the empowerment of rivalling definitions of the nation, the elements that constituted the Belgian iconography seem to have lost their meaning. Flanders and Wallonia are developing their own history, the monarchy does not seem to be a factor strong enough to guarantee the unity of the country, and language is more than ever before an issue of conflict. Only Brussels seems to be an element that will keep the country together. As a capital city and power centre, Brussels is of vital importance to both Flanders and Wallonia. Being a predominantly francophone city with a Flemish minority, Brussels is thus a true ‘frontier city’, in the opinion of Kotek. This means that it is both an element of conflict and confrontation and a place of dialogue between the two communities. The author concludes that, because of Brussels, separatism in the regions has little chances to succeed and Belgium as a state has a chance to survive the actual crisis.

The role of the capital-region in the community-conflict in Belgium and the
position of the Brussels Region as a zone of conflict and a place of dialogue have been further elaborated in the final contribution of this volume.

Political life in Brussels - it is also demonstrated in the studies of Tyssens and Deschouwer, discussed below - cannot be approached as an isolated case. However, do its more attractive features lend themselves for export to Jerusalem? One obstacle may be located within the different ways of how territory and identity are played out in the two cities. In the contribution on the meaning of the concepts of territoriality and identity by Anja Detant (VUB), the focus is on the role these concepts have played and are still playing in the struggle between both communities in Belgium. She tackles the question of the extent to which both elements have determined the evolution of community contrasts in the Belgian capital. Her starting point is the fact that institutional reforms in the country run parallel with a redefinition of the whole of Belgian society. Belgium's far-reaching federalisation seems to bring about a strengthening of the ties between territorial and lobby group-loyalty. Spurred on by nationalistic projects in Flanders and Wallonia, the understanding of political identity in Belgium is constantly undergoing changes. 'Sub-nationalism' has overtaken the traditional ethno-linguistic definitions which used to provide the basis for the political dividing line in Belgium. Territorial demarcation of the regions, and politicisation of cultural life on both sides of the linguistic border, constitute the basic ingredients which create 'nationbuilding' projects in the regions. Whereas in Flanders nationalism is growing unambiguously and officially, in Wallonia it is developing more gradually and in a less explicit manner. Though up to now community-oriented thinking dominated the logic in Flanders, a redefinition of political interests, with national and territorial loyalties more and more coinciding, is currently taking place.

Why will the nationalism of the regions - undoubtedly - have repercussions on political developments in the capital area? Detant distinguishes a number of causes for this development. First and foremost, the political constellation in Brussels is very sensitive to developments on a 'national' level. The fact that the balance of power in Brussels is inversely proportional to the national equilibrium, is certainly an important element here. Furthermore, Brussels is the border area par excellence where both communities converge and co-exist. Every development on a national level thus influences coexistence of the communities on the level of the Brussels Region. Moreover, community contrasts which characterise political life in Belgium are crystallised in the metropolitan area. This means that both dimensions of the community struggle are closely intertwined, and that a solution for these contrasts will inevitably have to comprise the national and the local level.

Language and territoriality play a special role in the Brussels area: recent political developments in connection with territoriality and identity seem to create mid- and long-term opportunities to redefine the relationship between both communities in Brussels. Although the Brussels' compromise is based on the paradigm of the presence (or confrontation) between two communities recognised as such, a large part of the population of Brussels cannot be positioned within this bi-community framework. Hence the question to which extent institutional bi-polarity in Brussels will be maintained in the future: Detant suspects that the breach between the French-
speaking and the Flemish-speaking communities may be jeopardised (or overcome) by new developments. The process of territorialisation, the functions of Brussels as a metropolis, the position of Brussels as a border area between Flanders and Wallonia, and the heterogeneous composition of the Brussels population, are all determining factors in this respect. She concludes that it is not inconceivable that the Flemish-French-speaking divide in Brussels may fade out and will be replaced by identification on the basis of a territorial criterion shared by all inhabitants in Brussels.

Notes

1 A large and affluent group of Diaspora-based Jewish NGOs, which operate nearly exclusively in Jewish Jerusalem, exists as well. By and large, these finance and/or provide services supplementary to the State of Israel in the cultural, social, educational, health, and religious spheres.

2 A substantial but less well-defined portion of Jerusalem’s Jewish population are the modern-Orthodox; this group is politically often associated with Zionist religious nationalism and with the settler movement. However, their group identity lacks clear territorial focus in Jerusalem.
LEGAL STATUS OF BRUSSELS
A DESCRIPTION OF THE BRUSSELS INSTITUTIONS

Jacqueline de Mol (ULB)

1. A general overview of the Belgian federal system

1.1. General

According to Article 1 of the Constitution, Belgium is a federal state. This means that, besides the federal state, political collectivities exercise special authorities in different parts of the federal territory. Federalism as organised by the Belgian Constitution is a 'twofold' federalism as there are two different types of federal entities. Actually, Belgium consists of three Communities (the French Community, the Flemish Community and the German-speaking Community) and three regions (the Walloon Region, the Flemish Region and the Brussels-Capital Region). Each one of these exercises power in one or more of the different 'linguistic' regions which together form the Belgian territory (the French language territory, the German territory territory, the Dutch language territory and the bi-lingual territory of Brussels-Capital).

The present institutional system is in fact the result of several reforms which started in 1971 and which changed Belgium from a unitary state to a federal state. While the creation of a Community system has been the wish of the Flemish movement for a very long time, (they have always been fighting for the recognition and the development of their language and culture), the French Community, however, favoured regionalism. Indeed, the Walloons wanted socio-economic autonomy hoping it would help them to fight the economic crisis, which was certainly worse in their region.

Each Community and region has its Council and Government in order to execute the powers given to them by the Constitution and the laws enforced by the Constitution. While the Constituent favoured a clear-cut division between the Community and the region, the constitutional provision concerning the Communities, (the old Article 59bis, now Article 137 of the Constitution) was modified in 1980 in such a way that a federal law with special majority could allow the institutions of the Flemish and French Communities to exercise respectively the powers of the Flemish Region and the Walloon Region. This modification of the Constitution corresponded to the wishes of the Flemish people, who wanted to stress the 'double' structure of the Belgian state divided rather into two big Communities than into four language territories, three Communities and three Regions.

Because regionalisation prevails over 'Communitarism' in the French-speaking area, only the Northern part of the country has taken advantage of this opportunity. Therefore in Flanders the institutions of the Flemish Community also exercise the authority of the Flemish Region. This is why there is only one Flemish Council, the 'Vlaamse Raad' and one single Flemish Government in the Dutch language territory.
of the country. This is not the case in the French language territory of the country, where there are the Council and the Government of the French Community, the Regional Walloon Council and the Government of the Walloon Region. In 1993 a new clause, Article 138, was inserted in the Constitution granting the possibility to the French Community to transfer the executive power to the Walloon Region and to the French-speaking group of the council of the Brussels-Capital Region (see below).

This Constitutional provision reinforces the asymmetric structure of the Belgian State. In the French language territory, where the idea of regionalism prevails, the evolution develops towards a French Community which is more and more ‘emptied’. On the Flemish side, however, where the Community idea prevails, the same institutions, the Flemish Council and the Flemish government, have authority over both the Flemish Community and the Flemish Region.

Conflicts between laws, decrees and ordinances are ruled by the Arbitration Court, which determines the competent legislator based on constitutional and legislative regulations. The authorities of the federated entities are attributed powers. They are in effect conferred by the Constitution and the special law which makes a limited enumeration of it. The other authorities, called ‘residual powers’ depend upon the federal authorities. The powers of the State itself do not need to be enumerated; it has all the non-attributed powers.

1.2. The powers of the Regions

The French-speaking and the Dutch-speaking Regions exercise their authority by adopting decrees and orders. The Brussels-Capital Region, however, adopts ordinances, which in the Brussels-Capital Region have the same authority as the regional decrees, but are subject to control not affecting the latter. The regional governments adopt orders and executes the regional decrees.

1.2.1. The powers of the Regions ratione materiae

The Regions have authority over the following matters: Area-development planning, environment, rural redevelopment and nature conservation preservation, housing, water policy, economy, energy policy, tutelage of the subordinated powers, employment policy, public works and transportation. Some of these transferred items have been kept under the federal authority. For example, economy is a regional authority, but finance and monetary policy, public markets and consumer protection remain national issues. In the same way energy policy is regionalised, except for matters such as nuclear energy, transportation of energy, tariffs, ....

1.2.2. The powers of the Regions ratione loci

The territory of the Flemish Region comprises 5 Flemish provinces: The Flemish province of Brabant, the province of Antwerp, East and West Flanders and the province of Limburg. The territory of the Walloon Region also has 5 provinces: The province of Hainaut, the province of Namur, the province of Liège, the province of
Walloon Brabant and finally the province of Luxembourg. The Brussels-Capital Region is only an administrative arrondissement consisting of 19 municipalities.

1.3. The powers of the Communities

Like the Flemish and French Regions, the three Communities exercise their power by decrees adopted by their respective councils. They are executed by regulations and orders of their governments.

1.3.1. The powers of the Communities ratio materiae

The authorities of the Communities are as follows:

1) Cultural matters.
2) Education - with the exception of the determination of the duration of compulsory education, the determination of the minimum criteria for the issuing of school certificates, and the pension schemes.
3) Person-related issues.
   This covers health care and aid to individuals. It consists mainly of:
   - as far as health care is concerned:
     . medical care
     . medical education and preventive medicine
   - as far as aid to individuals is concerned:
     . family policy
     . social assistance
     . policy towards integrating immigrants
     . policy to the disabled
     . old age pensions
     . protection of minors
     . social aid to prisoners.

   However, there are exceptions in some items of these matters which fall under the national authority.

4) The use of languages.

The principle remains that, according to the terms of Article 23 of the Constitution, the use of a specific language is a matter of free choice. This means that the citizens may equally use French, Flemish or German when they address public authorities. The law can only limit this freedom of the use of the language for acts of public interest and for legal affairs. However, the old article 59 bis par. 3 of the Constitution specifies that the French and Flemish Communities are empowered to regulate the use of these languages in administrative matters (language used by public agents and matters of public interest), education, social relations between the employer and his employees, the regulation authorised by Article 23 will be rather communal than national.
1.3.2 The powers of the Communities ratio loci.

The definition of the territorial powers of the Communities cannot be separated from the concept "Community". Communities are not a priori territorial collectivities. Indeed the concept "Community" refers to a group of people speaking the same language and having the same cultural background, but does not necessarily imply a territorial entity.² The linguistic criteria therefore underlie the definition of "Communities". It might well be the case that a perfect identity between territorial and linguistic criteria for the German Community exists, this is not so for the French and Flemish Communities.

Indeed, the German-speaking Community has authority in a well-defined area, namely the German-speaking territory. The French and Flemish Communities exercise their authorities totally and completely in their respective linguistic territories. In the bi-lingual Region of Brussels-Capital, they are only competent over institutions - which must be regarded as belonging exclusively to their respective Community- and not over individuals. This prevents people living in Brussels from having to choose between a Dutch- or French-speaking sub-nationality.

2. Brussels institutions

2.1. Introduction

The complexity of the Brussels institutions is partly due to their resulting from a compromise between two entirely different visions of the statute which had to be given to Brussels. For the Flemish people, the linguistic situation in Brussels symbolises a Dutch-speaking city fallen victim to a francophone domination to such an extent, one often hears the following remark: 'In the worst case, Brussels is for them an old territory which needs to be re-conquered, all the more because it is located in Flanders, beyond the linguistic borders. At best, the city is a threat to the Flemish identity, 'a machine working at turning Brussels into a French city' and its activity should be urgently stopped.³

On top of this feeling of cultural oppression, the fear came of becoming a minority in a country consisting of three Regions of which two are allies, kept together by a common language fighting the other Community. There is also the fear on both sides to become excluded from live in a Capital, which is a very important economic centre⁴.

Those facts led the Flemish majority to act in two directions: because of their aversion of the concept of Region, they favoured the administration of Brussels to be effected by either the national government or by the French and Flemish Communities acting together. On the other hand, they refused all expansion of the Brussels territory towards the suburbs, wishing to fence off the Brussels bilingual boundaries by definitive boundaries which would correspond to those of the administrative arrondissement of Brussels-Capital. The francophones, however, look upon Brussels from quite a different angle since the power (a.o. communal) is in their hands. They considered Brussels as the place of resistance against a Belgian Flemish majority; the
re-conquest of Brussels by the Flemish would be considered as a defeat which would symbolise the weakness of the French Community.\(^5\)

The francophones wanted Brussels to become a ‘Region à part entière’ (autonomous Region) expanding unlimitedly: the inhabitants would be consulted to determine if they wanted to belong to it. The absolute majorities, which were obtained by French-speaking lists in several municipalities surrounding Brussels, was interpreted as so many votes in favour of adhesion.\(^6\)

When the Flemish parties realised that the division of the country into three Regions proved to be an inevitable element of political debate, they accepted the creation of a third Region with the same powers as the two others.

The francophone signatories on their side, dropped their territorial claims: all the Brussels institutions have their power limited to a well-defined territory, coinciding with the administrative arrondissement of Brussel-Capital. The Flemish parties could not conceal their extreme weakness in number, and were forced to ask for a series of specific measures of protection. The French-speaking parties therefore granted the Flemish protective measures concerning the minority, in the Council as well as a parity in the government. They accepted that the ordinances of the Council of the Region of Brussels Capital would not have the same legal value as those of the decrees of the Walloon and Flemish Region: jurisdictional control has been introduced, as well as political control by national authorities.

To this political difficulty, a legal difficulty is added. Brussels is at the crossroads of the Regions and the Communities as well as the local authorities. This results in an institutional imbroglio which the Constituent and the legislative body tried to simplify by re-grouping very different authorities on those who were elected.

The same 75 members of the Council of the Brussels-Capital Region possibly linguistically separated exercise distinct authorities in Brussels at distinct authority levels, with distinct norms, in distinct institutions, with distinct legal personalities. There are 5 different Brussels institutions: the Brussels-Capital Region, the Brussels agglomeration, the Community Commission, the French Community Commission (COCOF) and the Flemish Community Commission (COCON).

The following considerations describe the organisation and the functioning of those different institutions.

### 2.2 Regional Authorities

The Brussels institution having regional authority is the Brussels-Capital Region. Although article 3 of the Constitution setting up the 3 regions of the Kingdom refers to the ‘Region bruxelloise’, the special law applying this article organises the ‘Brussels-Capital Region’. This different denomination is the result of a political compromise between the French and Flemish parties of the majority, the French stressing the special status of Brussels, the Flemish stressing the special responsibilities of its role as capital of the State.

The district of the Brussels-Capital Region covers the territory of the administrative conurbation of Brussels-Capital, that is to say the City of Brussels and
the 18 municipalities. This district coincides with the bilingual Region of Brussels-Capital. According to Art. 4 of the special law of 12 January 1989, the Brussels-Capital Region has the same authorities as the French and Flemish Regions. Besides the regional powers, the execution of authority by the Brussels agglomeration was entrusted to the institutions of the Brussels-Capital Region. Subject to new powers which could be given to the Brussels conurbation, they are: garbage collection, urban transport, the remunerated transportation of individuals, fire fighting and urgent medical aid. When the regional institutions exercise the authorities of the conurbation, they function the same way as they do for regional matters, except for matters of the conurbation, the norms taken by the institutions of Brussels-Capital Region are regulations and not ordinances.

Finally, the reform of 1993 created the provinces of Walloon Brabant and Flemish Brabant. This reform rescinded the territory of the Brussels Region from the division into provinces as of 1 January 1995. As a consequence the authorities exercised by the province of Brabant were attributed to the Brussels territory and divide them over the different Brussels authorities.

This reform mainly concerns the Community Commissions. The authorities previously exercised by the province of Brabant concerning regional matters, are exercised by the regional council or the regional government by way of ordinances or orders. The Region also inherited the provincial tasks of general interest, such as the nomination of candidates for legal functions.

As for the jurisdictional functions which were exercised by the Permanent Deputation, they are now exercised by a special body of nine members chosen by the council of the Region. Moreover, since 1 January 1995, the authority of the provincial governor representing the federal power is exercised by a ‘governor-representative of the government’, assisted by a vice-governor who has to see to the implementation of the law concerning the use of the languages in the municipalities of the Region is implemented.

Like all the other regional and communal entities, the Brussels-Capital Region has its own Council and Government. The co-existence in this Region of two Communities which are unequally represented, has influenced the Constitutional rules and the procedures established the law.

In addition, the these procedures reveal a certain distrust of the two other Regions the way the inhabitants of Brussels could eventually use their authority with regard to the ‘national and international vocation of Brussels’.

2.2.1. The Council of the Brussels-Capital Region

The Council consists of 75 members directly elected. Because of its communal duality, the Brussels-Capital Region does not have a constitutive autonomy: therefore, the Council cannot modify neither its composition, nor the electoral procedure, the principles of is functioning and the statute of its members.
2.2.1.1. Election of the Council

Every five years the Council is entirely renewed. When a candidate declares his eligibility, he first has to make a statement concerning the linguistic group he belongs to, which is binding for the subsequent elections. Furthermore, any candidacy for the Council must be supported by either 500 voters belonging to the same linguistic group as the candidate or by at least one member of the outgoing Council. The lists are unilingual because this helps assuring a specific representation of Dutch-speaking members in the Council. This electoral system risks to hinder the emergence of a Brussels 'conscience' independent from any linguistic division because the inhabitants of Brussels are compelled to follow as criteria for their voting: the linguistic group rather than the proposed political program.

As for the system of 'supporting candidates', it shows the will of the Northern part of the country to control the regional council members in order to verify the linguistic background of the Dutch-speaking candidates. It also expresses, more generally the reticence of the Flemish people of Flanders to see their Brussels counterparts having real autonomy. Before the distribution of the seats to the different parties, a repartition is made between the French-speaking and the Dutch-speaking groups. In principle this is done in order to make sure that the Dutch-speaking minority in Brussels is sufficiently represented in the Council.

2.2.1.2. Powers of the Council

The members of the Council are divided into linguistic groups. The francophone counsellors elected from the French-speaking electoral lists will form the French linguistic group. The counsellors elected from the Dutch-speaking electoral lists will form the Dutch linguistic group. The Council will elect a President and a Vice-President belonging to a different linguistic group. This distribution into linguistic groups assures the protection of the Flemish minority of Brussels. It rules the composition of the institutions of the Community Commissions and that of the executive. It allows also the functioning of the 'alarm bell' procedure. It is settled that the Flemish linguistic group must, in any case, be represented in each Commission. The projects for ordinances and amendments of the Government are made in the two languages. On the other hand, the propositions for ordinances and the amendments of the members of the Council are made in the language of the linguistic group of the author.

Both linguistic groups of the Council also play a role in the composition of the Council of the French Community and the 'Vlaamse Raad' which must in fact comprise respectively 19 and 6 regional Brussels counsellors.

2.2.2. The Government of the Brussels-Capital Region

2.2.2.1. Composition of the Government

The Government consists of five ministers elected by the Council and responsible to it. Only the designation of the President must be ratified by the King to
whom he swears allegiance. The composition of the Government is also dominated by linguistic considerations. In fact, the Government must have an equal number of Flemish and French speaking members, save the President. Two possibilities occur when electing the members of the Government:

- When both linguistic groups agree, the candidates are automatically elected if they are presented on one single list signed by the absolute majority of the members of each linguistic group.

- If they don’t agree, the Council elects the ministers by as many votes as there are seats to be filled. The President is elected by the Council, the other ministers by their respective linguistic group.

Differing from other Regions, here the President is not appointed by the Government but by the Council by means of an absolute majority in case of disagreement and at the absolute majority in each linguistic group in case of agreement. Consequently as long as the francophones have the majority in the Council, the President of the Government of the Brussels-Capital Region will most probably be a francophone.

The designation of the President is ratified by the King to whom he swears allegiance. The other members of the Government swear an oath of allegiance to the President of the Council. None of them may be a member of the Brussels-Capital Region and at the same time a member of the national Government or of another regional or Community Government.

Finally, following a proposal by the Government, the Council elects three regional Secretaries of State of which at least one belongs to the Dutch linguistic group. If there is no such proposal, the Council determines by an the absolute majority of votes, the distribution of the three seats between the linguistic groups, considering that one of them must be reserved to the Dutch linguistic group. The linguistic groups elect then the Secretaries of State according to their needs. The Secretaries of State are not part of the Government but are responsible for the Council under the same conditions as the members of the Government and may attend those meetings. Each of them is adjoint by a member of the Government of the same linguistic group.

### 2.2.2.2. Functioning of the government

The Government deliberates collegial following the principle of collegial deliberation. The Government distributes the tasks in order to prepare and execute its decisions. By lack of consensus on this subject, there is a system of guaranteed competence for each member of the government. The President of the Government first selects one of the groups of matters at hand. The members of the largest linguistic group execute, according to their rank, the second and fourth choices.

The members of the smallest linguistic group execute, following their rank, the third and fifth choices. As the other regional and Community governments, the Government of the Brussels-Capital Region is responsible to the Council and may only be dismissed by a ‘motion of non-confidence’ including an alternate proposal to
elect a new member of government. This procedure requires particular majorities which must take into account the presence within the Council of francophones and Flemish.
- The whole government may only be dismissed with the agreement of the majority of the members of the Council and of each linguistic group.
- A member of the Government may only be dismissed by the majority of the members of the linguistic group to which he belongs, with the exception of the President for whom the agreement of the majority of the members of the whole Council is required.

2.2.3. The legal norms

When the bodies of the Brussels-Capital Region exercise conurbation, they take, following the cases, orders. The regional matters are executed through orders and decrees. This is a surprising particularity. Indeed, while according to article 4 of the Special Law of 12 January 1989, it has the same authority as the Walloon or Flemish regional Councils, the Council of the Brussels-Capital Region, unlike the other regional Councils, does not make decrees but ordinances.

In the hierarchy of norms, the ordinance is on the same level as the laws and decrees since, following Article 7 of the Special Law, 'the ordinance may abrogate, complete, modify or replace the legislative clauses that are effective'. Article 9 of the Special Law organises the authorities which the courts and tribunals have towards these ordinances. They may control the conformity of the ordinances with the Special Law of 12 January 1989 and with the Constitution, subject to the clauses which are controlled by the Arbitration Court (these are the rules distributing among the powers among the state, Communities and the Regions, as well as articles 10, 11 and 24 of the Constitution establishing respectively the principles of equality of the Belgians in the eyes of the law, of non-discrimination and of protection of the ideological and philosophical minorities as well as the freedom of teaching) the sanction being the non-application of the ordinance.

These clauses, turns the ordinance into a special norm: 'if one imagines the hierarchy of norms on a vertical axis, it is at the level of the law which it may modify or abrogate, however it is not exactly similar: it is indeed under the control of constitutionality which is traditionally forbidden to Belgian jurisdictions contrary to the law.' At the background of this control of the Brussels norms, appears the Flemish will to limit as much as possible the autonomy of the Brussels institutions.

The ordinances are adopted by a majority of the members present and an the absolute majority of votes. Double majority in each linguistic group is not required.

2.2.4. The political controls exercised by the central authorities

In order to protect the function of the capital and the international role of Brussels, the Brussels-Capital Region is submitted to an occasional political control from the central authorities. The article 45 of the Special Law organises a particular procedure of suspension and recision of the ordinances of the Council and the orders of the Executive. The initiative belongs to the King who, by order discussed in the
Council of Ministers, may suspend an ordinance of the Council or a order of the Government within 60 days after publication. Within the 60 days, there is then a concertation procedure between the national government and the Government of the Brussels-Capital Region. This takes place within the Committee of Co-operation, a body specific to the co-operation between the State and the Brussels-Capital Region, made of as many ministers of the National Government as there are members of the Government of the Brussels-Capital Region. Each delegation has to be organised in such a way that the linguistic equity is respected. If no agreement is reached at the end of the concertation, the Chamber of Representatives may cancel the ordinance of the Council or the order of the Executive, if there is a majority in this sense within each linguistic group.

The article 46 of the Special Law organises a substitution procedure in case the Brussels-Capital Region fails to fulfil its international role or its function as a capital. This clause authorises the Council of Ministers to submit to the co-operation Committee the measures which, in its opinion, the bodies of the Region should take in order to ‘develop the international role and the capital function of Brussels’. If the concertation procedure fails, the Council of ministers may address itself to the Chamber of Representatives for its approval of the projected measures by an absolute majority of both linguistic groups.

The powers of the State bodies named for intervention during these revision and substitution procedures are doubly limited. On the one hand, only orders or ordinances concerning area development planning, territory organisation, transportation and public works may be concerned by these procedures. On the other hand, such established mechanisms may be applied only in order to preserve the international role or the capital function of Brussels.

A control has been installed in order to evaluate the legality of the recourse to procedures of articles 45 and 46 of the Special Law. This control, allowing the legislative section of the State Council to put an end to these procedures seems not be very efficient. The legislative section may interfere only if it is called by the Co-operation Committee and half of this Committee is composed of national representatives who may thus paralyse the implementation of a possible control.

2.3. Community institutions

Institutions competent in Community matters were created alongside the Brussels institutions with regional character.

These institutions are:
The COCOF (French Community Commission)
The COCON (Flemish Community Commission)
and the COCOM (Joint Commission for Community matters)
2.3.1. The French and Flemish Community Commissions

2.3.1.1. Objective

These Community bodies were created in Brussels because of the prohibition in article 39 of the Constitution to give to the Regions the authority of the Communities. This prohibition was wanted by the Flemish in order for them to make sure that the authority of the Communities wouldn't be later on in the hands of the Brussels Region. For this would have separated the Flemish in Brussels from Flanders. It's true that the Communities would have been able to execute most of the tasks which were given them. However, the founding of the Community Commissions allows Brussels not to depend exclusively on the Communities in Flanders and Wallonia which could take a dominating attitude with little attention respect for the Brussels interests.

2.3.1.2. Authorities

2.3.1.2.1. Authority exercised as local organising bodies

The COCOF and the COCON each have, for their part, the same powers as the other organising bodies in the matters given to the French and Flemish Community, i.e. teaching, culture and person-related issues.

In particular:
- to elaborate and implement a programmation of infrastructure concerning these matters;
- to create the necessary institutions, to manage them and to give them credits;
- to make recommendations to the authorities concerned as well as giving advice;
- to take initiatives and encourage them in the cultural matters and person-related issues.

The implementation of this authority goes through regulations voted by the assemblies and orders adopted by the colleges. When they act as local organising bodies the Community Commissions are bodies submitted to the tutelage of the Community on which they depend.

2.3.1.2.2. Implementation of the authority delegated by the Communities

The Community Commissions may have regulatory authority which may be transmitted to them by the French Community or the Flemish Council. This delegation of powers may only concern the right to regulate some matters, or to take punctual decisions. When they practice their executive power or of delegated authority the Community Commissions act through reglementations voted by the assemblies or implementing orders decrees of execution taken by the colleges and they are also submitted to the tutelage of the Governments on which they depend.
2.3.1.2.3. Authority transferred from the French Community

The most recent institutional reform in 1993 established that the French Community may transfer to the Walloon Region and to the French Community Commission of Brussels - with their agreement - part or certain powers. Such a possibility does not exist for the Flemish Community Commission. When acting along this framework in this framework, the French Community Commission adopts decrees not submitted to a tutelage power as to particular controls mentioned when talking about Brussels regional ordinances. It is thus the only body in Brussels to have a regulatory power identical to that of the other Communities and Regions. When using its transferred powers, the French Community Commission acts as a federated entity and not as a subordinate authority.

2.3.1.3. Organisation

Each Community Commission has a two level structure:
- The Assembly is made of the linguistic group corresponding to the regional Council;
- The College is made of the ministers and of Brussels Region, Secretaries of the corresponding linguistic group. This body decides collectively following the consensus procedure. They are joined by one Brussels member, who has consultative power of the Government of the Community concerned. The President of the Brussels Government is not part of this College.

2.3.2. The Joint Commission for Community Matters

2.3.2.1. Objective

The Communities practice their exclusive authority in each of the three unilingual linguistic regions but this is not the case on the territory of the bilingual region of Brussels. On the one hand, the Communities are only competent as far as the institutions are concerned, with the exclusion of the people, this, in order not to force the inhabitants of Brussels to choose between a Flemish or a francophone sub-nationality. On the other hand, among the Brussels institutions only those considered on the basis of various criteria (organisation of matters dealing with the people and the activities for the cultural matters) as belonging exclusively to one or the other Community, depend on the Communities.

As a consequence, there is in Brussels a dual-Community sector including individuals and various institutions which may not be considered as belonging to one or the other Community. While the dual-cultural and scientific institutions such as the Royal Theatre of the Monnaie, the Belgian National Orchestra, the Royal Library Albert I, the Musea are still depending on the Federal State, the dual institutions dealing with matters of individual interests depend on the COCOM.
2.3.2.2. Areas of authority

2.3.2.2.1. Dual Community matters concerning the persons

The individuals who do not transit through an institution as well as the institutions which because of their organisation, do not exclusively belong to one or the other Community, belong to the dual Community field dealing with persons. For example, the public hospitals, the public centre of social assistance (CPAS) but also generally speaking, all the social or health organisms which haven’t chosen a uni-Community statute.

Within the framework of activity, the Common Community Commission acts as a federated entity, a total autonomous power, free from any tutelage from the Communities. The assembly votes statutes which are executed by the college through decrees. The orders are adopted by the majority of the members present and by the absolute majority of the votes in each linguistic group. The protection granted to the Flemish minority of Brussels is thus wider for Community matters than for regional matters. As a corollary to this reinforced protection, the procedure of the ‘alarm bell’ does not exist in Community matters with the gathered assembly. These orders have the same strength as the regional orders. They are submitted to the same jurisdictional control as the latter.

2.3.2.2.2. The matters of common interest to the French and Flemish Community Commissions.

These are matters belonging normally to both Community Commissions but which concern both Communities while remaining limited through local interest. For example: help for communal or private musea, financing of sport centres, sponsoring of festivals, conferences or various dual-Community events. In this matter, the Community Commission only has a regulatory authority.

2.3.2.2.3. Co-ordination role

The Community Commission has a more general role of concertation and co-ordination between both Communities in Brussels.

2.3.2.3. Composition

As the two other Commissions, the Common Community Commissions has an Assembly and a College. The Assembly is made of members of both linguistic groups of the Council of the Brussels Capital Region. It has thus the same composition as the legislative assembly of the Region but it is an institution legally distinct as it doesn’t legislate regionally but on the Community ground. The college is made of the two francophones and the two Flemish of the regional Government to whom must be added two inhabitants of Brussels from each Community Government who have consulting vote. The President of the Government of the Brussels-Capital Region only has one consulting vote in the College, to keep strict Community parity.
Conclusion

The Brussels-Capital Region is recognised as a whole Region but one must admit that it is not like the other Regions. It is indeed subject to a number of constraints which make it different from the Flemish and Walloon Regions but which may not be considered as preventing it from being a whole Region.

These constraints, justified by the need to protect the Flemish minority in Brussels and to guarantee the international role and capital function of Brussels, do not have as first purpose to reduce its autonomy. Some people think that because the Brussels Regional institutions are complex, they are not efficient. One shouldn’t forget that this complexity is the consequence of a whole judicial construction aiming at guaranteeing the coexistence of two linguistic Communities within specific bodies representing the Brussels population. The institutions are the ideal location for a cooperation between Flemish and francophones as people living in Brussels and going beyond the Community differences. As far as the regional aspect is concerned, such a collaboration is very important as it is the only way to allow the Brussels-Capital Region to play a 100% role of real region.

Regarding the Community aspect, one must admit that the emergence of a Brussels Community is prevented by the tutelage on the Flemish Community Commission by the Flemish Community as well as by the absence of follow-up by the same Community to the possibility of delegating its authorities. However, there is no doubt that the possibility of transferring to the French Community Commission the authority by the French Commission, has paved the way for the coming to life of a Brussels francophone Community of which one says that it could, if it remains homogenous and united, play a crucial role in the institutional future of Belgium.

Notes

THE INSTITUTIONAL BALANCE IN BRUSSELS

- The influence of the ties that bind the inhabitants of
  Brussels to their respective Community -

J. van Ypersele (FUSL)

Preliminaries

The creation of the institutions in Brussels is the result of two political
movements: the Flemish Movement on the one hand and the Walloon movement on
the other hand. In 1970, the Flemish Movement in search of cultural emancipation,
gave birth to two federalised entities in the Belgian state. These entities embody the
need for autonomy of the Dutch and French-speaking people: the French Community
and the Flemish Community. Both Communities rule by decrees, which are equal to
legislative acts. Their competence comprises educational, cultural, health care, and
person-related matters, and their authority respectively goes for the French and the
Flemish unilingual territory.

The bilingual territory of Brussels-Capital is the meeting-point between the two
Communities. Each of those Communities exerts its authority on the Brussels
territory, but, as we will see later, their competence is subject to strictly defined
conditions. In addition, they have the possibility of delegating or even transferring
their competence to bodies that are specific to Brussels: the French Commission for
Community Affairs (FCCA) and its Flemish counterpart (DCCA).

The Walloon movement, seeking to recover control over its deficient economy
in the sixties, led to the regionalisation of the Belgian state in three federated entities:
the Flemish Region, the Walloon Region and the Region of Brussels-Capital. These
are in charge of economic matters, urban development and environmental affairs. The
Flemish and Walloon Region rule by decrees, exactly like the Communities. Unlike
these, however, the Region of Brussels-Capital rules by ordinances. A few minor
variations account for this difference in terminology. Ordinances nevertheless are
legislative acts, as decrees or federal laws are.

For the creation and existence of the regions has been left room for by the
Constitution since 1970. Nevertheless, the Walloon and the Flemish Region were
only created in 1980. The Flemish Region, in spite of the fact that it is only
competent on the unilingual Flemish territory of Flanders, decided to merge its
Parliament and its Government with their counterparts of the Flemish Community.
Conversely, the Walloon Region, sustained by a strong regionalist movement, decided
to break free from the influence of Brussels; therefore, it refused to merge with the
French Community and chose Namur as its capital.
The Brussels Region had to wait nine more years to become a reality. Indeed, the Flemish were afraid to see the emergence of a third institutional pillar that would end up in French hands. Paradoxically, it could make a minority of the Flemish on the institutional level (two French Regions versus one Flemish Community), in a country where the Flemish make up a majority. Furthermore, Brussels, which is situated like an enclave on unilingual Flemish territory and is the capital of the Flemish Community and of Belgium, could not fall into exclusively francophone hands.

These reasons explain why different mechanisms were implemented in order to share the power between French-speaking and Dutch-speaking inhabitants of Brussels, even though the latter represent only 15% of the Brussels population.

The sharing of power is organised as follows. The Parliament of the region is composed of directly elected representatives divided into two linguistic groups. Both groups have the power to veto the implementation of the legislative procedure. The Government of the region is composed of five Brussels ministers: Their deliberations are governed by the consensus-procedure principle. The consensus is a negotiated decision process half-way between a majority vote and unanimity. The ministers who do not agree with the decision must comply or resign. The consensus procedure is of the utmost concern, for it allows the wishes expressed by the majority to be taken into consideration, as long as they do not jeopardise the opinion of the minorities.

Introduction

Mainly three federated entities are competent in Brussels: the two Communities and the Region. The two Communities autonomously exert their competence in Brussels. They embody the need for autonomy of Dutch and French-speaking people. Conversely, the Region, in which French and Flemish inhabitants of Brussels share the power, embodies the need to ensure a coherent management of the city that bridges the cultural divide between the inhabitants of Brussels.

The Brussels institutions thus constitute a compromise between two opposed kinds of logic; the need for autonomy of the Dutch and the French-speaking is a centrifugal one, but the necessity to ensure a global policy to maintain the coherence of the city expresses a centripetal logic.

From this point of view, the Brussels institutions provide an interesting model for Jerusalem. Indeed, the cultural, political, economic and social divides between Israeli and Palestinians contain such centrifugal dynamics that they have to concede autonomy.

Then, because the Israeli and the Palestinians refuse to divide the city again, it will be necessary to set up institutions capable of counterbalancing these particularly strong centrifugal dynamics. Inside those institutions, the power will be shared between the two populations in order to ensure a coherent policy for the whole city. These institutions should be sufficiently efficient to provide a counterweight to the centrifugal dynamics so special to Jerusalem.
The purpose of the present study is to identify institutional factors that have contributed to the success of the Brussels institutions. The decision process within the region is characterised by the power of each group to lock the whole decision-making process (loyalty vis-à-vis colleagues, consensus, alarm-bell procedure, double majority vote ... ) Still this system remains very fragile: it will fail as soon as a linguistic group prefers a decisive lock to the surrender of a claim considered to be unacceptable by the other group.

The success of the Brussels model has been made possible by several institutional, sociological and political factors that should be defined in order to evaluate the possibility to transfer it to the Jerusalem scene.

In the present study we will focus only on the institutional factors that have facilitated the so-called 'Brussels miracle'. More precisely will we assess as to what extent the types of ties linking Brussels inhabitants to their respective Community can influence the decision-making process within the Region.

In principle, there should be no interference, since Communities are concerned with Community-matters in Brussels, whereas the Region is concerned with regional matters. This logic, however, ignores the political dynamics of the situation, which the present study will try to identify.

We will first of all define the criteria determining the reattachment of Brussels citizens to their respective Community (1). We will then study the political representation of Brussels citizens within their Community (2).

1. The criteria reattachment of Brussels inhabitants to their Community

0. Introduction

The relationship of the inhabitants of Brussels with their respective Community is not related to sub-nationality (repartition of competence ratione personae) or to their place of residence (repartition of competence ratione loci).

In the bilingual territory of Brussels-Capital, the Flemish and French Communities are only competent with regard to the institutions established on that territory that, because of their activities or organisation, must be considered as belonging exclusively to the one or the other Community. The tie between the Brussels inhabitants and the Communities is an indirect one through public institutions (public schools, university hospitals ...) or private institutions (theatres, private schools ...) which the inhabitants turn to support; only those institutions depend directly on the Communities.

The Communities are not directly competent for individuals. In the bilingual region of Brussels, each citizen can choose which institutions he will address. For instance, a Dutch-speaking person might sometimes be involved with Flemish institutions, sometimes with French-speaking institutions, or even with institutions which are not solely attached to one of the two Communities, without ever having to make a final choice between the two.
1.1. Advantages

These criteria of reattachment of Brussels inhabitants to their Communities form an original system of competence repartition between Communities and offers the advantage of avoiding traditional systems of repartition ratione loci or ratione personae.

1.1.1. Advantages in comparison with the ratione loci repartition of competence

1.1.1.1. Prevention of the formation of cultural ghettos

Mixed Communities of or mixed states relying on the ratione loci repartition of competence translate the ideological, religious or ethnic divides with regard to the territory. They thus lead to the formation of ghettos and a self-imposed isolation of each Community. Conversely, the Brussels system curbs the phenomena by legitimising the presence of every individual throughout the whole territory whatever its Community of origin. As such, it prevents the formation of ghettos within the city. However, as each Community is competent throughout the Brussels territory, this system of competence repartition does not prevent the development of conquest strategies. For instance, the Flemish Community offers incentives to Flemish civil servants to stimulate them to move to Brussels with their family. In so doing, it intends to counter the frenchification of the city. It is clear that the neutralisation of geographical conquest strategies does not prevent the development of demographic conquest strategies.

1.1.1.2. Regional competence equals common interest competence

The impossibility to use a ratione loci repartition of competence holds the major advantage of territory-based competencies (economy, urban development, environment, transport...) are of common interest to both Communities. Neither of them has any interest in locking the whole decision-making process in regional matters as these are equally relevant to Dutch and French-speaking inhabitants.

Although some inter-communal tensions might arise on some specific issues, these tensions so far never have reached such proportions that one of the partners prefers a decisive lock over the surrender of one of its claims.

1.1.2. Advantage in comparison with the rationa personae repartition of competencies

The system of rationa personae competence repartition necessarily implies the choice of a so-called sub-nationality. The constitution specifically avoids the establishment of a sub-nationality in Brussels.

The absence of sub-nationalities avoids the seeds of discrimination from being sowed. The mandatory choice of a sub-nationality locks up the individual in an institutional system based on a difference that is relatively unimportant for him as long as the freedom of access to the Flemish or French institutions is granted. A sub-
nationality in Brussels might artificially reinforce the social meaning of minority/majority relations.

Finally, this system takes into consideration a certain number of public and private mixed institutions by submitting them to a bi-community regime.

1.2. The practical limits of the Brussels system

The system is limited in four ways: firstly, it is not applicable to the political representation of the Brussels inhabitants (1.2.1.), secondly it has failed to sustain the associative movements depending on both Communities (1.2.2.), thirdly it curbs the fiscal autonomy of the Communities (1.2.3), and finally, it is meaningful only within the logic of the repartition of competencies in Community-matters (1.2.4).

1.2.1. Political representation marked by the Community divide

The absence of sub-nationality does not apply to the political representation of Brussels inhabitants. Indeed, although the electoral system considers only a single electoral body, it nevertheless prohibits bilingual lists and identifies once and for all the linguistic quality of the candidate.

This embryonic sub-nationality results from the necessity of an equilibrated sharing of power between the French-speaking and the Dutch-speaking Brussels inhabitants. The balance of power between Dutch and French-speaking inhabitants requires of the members of the regional Parliament that they should be organised into two distinct linguistic groups.\(^{11}\)

The prohibition of bilingual lists as well as a definitive settling of the origin-problem of the candidates prevents French-speaking people from declaring themselves to be Dutch-speaking and vice versa, and consequently does not alter the representativeness of these linguistic groups.\(^{12}\) This might undermine the power balance as well as the legitimacy of the Region. This choice has been criticised, as the stake of the election became mainly linguistic rather than related to regional policy. It is said that this might be the unavoidable other side of the coin of the sharing of power-concept.

We do not share this view. Indeed, it is highly unlikely, even in the absence of such a system, that bilingual lists would have been proposed in Brussels. For this to occur, the mentality should change to such an extent, that the main political parties (until now split in French and Dutch-speaking parties) establish links and propose a common political project.

1.2.2. The disintegration of the bi-community regime

In the bilingual territory of Brussels-Capital, the Communities are only competent for the institutions which, as a result of their activity or of their organisation, must be considered as belonging exclusively to one or the other Community. In other words, the Communities are not competent for institutions, which as a result of their activity or their organisation, are not solely attached to one
of the two Communities. The Joint Commission for Community Matters is competent for matters such as health-care and those person-related matters not covered by the Communities, i.e. those matters related to persons or institutions that cannot be exclusively attached to one of the two Communities as a result of their organisation. These matters are called the 'bi-person-related' matters.

The Joint Commission for Community Matters is a federated entity formally independent of the Brussels Region. It also acts by means of ordinances and is composed of bodies gathering almost the same elected persons as those of the Brussels Region. It has functional modalities similar to that of the Brussels Region.

The Joint Commission for Community Matters has taken very few legislative initiatives. The double majority vote necessary for the adoption of the ordinances explains only partly the lack of success of the Joint Commission for Community Matters. The lack of ambition of this Commission stems from the difficulty to elaborate a global policy in this sector, as the latter is also dependent on the Flemish and French Community as well as on the Flemish and French Community Commission. In the presence of such an excessive splitting of competencies, a global policy would have been possible if co-operation agreements had been adopted; this clearly has not been the case.

A third reason for the disintegration of the Joint Commission for Community Matters is that several private Brussels institutions working in different sectors of assistance to person-related matters and health policy, feared that their dependence on the bi-community regime would subject them to linguistic constraints. Although this fear was legally unjustified, more than half of them led to choose a single community regime.

Thus, although individual citizens have free access to the French, Flemish and mixed institutions of their choice, private institutions working in health care and assistance to person-related matters still propose fewer and fewer initiatives as well as meeting rounds shared by the members of the two Communities.

The disintegration of the bi-community sector seems due to both the unwieldy decision-making process and to the possibility of the private institutions working in these sectors to join exclusively one or the other Community. This latter factor somehow reflects the linguistic divides that have affected civil society for decades and denies the existence of a Brussels mixed identity intended to establish ties beyond communal differences. It rather demonstrates that whenever there is no obligation to depend on the bi-community regime, preference is given to the single community regime.

1.2.3. A curb on fiscal autonomy

The ability of the Communities to raise taxes is impaired as a result of the lack of a territorial basis for these Communities. In absence of sub-nationalities, it becomes indeed impossible to identify those taxpayers who would be liable to taxes raised by one of the two Communities in Brussels. As a consequence, the fiscal autonomy of these Communities is compromised as each new source of financing
requires a prior agreement between Dutch and French speaking inhabitants of Belgium.

1.2.4. The system is applicable only to community matters

The system of competence repartition is only conceivable in terms of person-related matters. It cannot be applied to territory-related matters, such as economy, urban development, environment, transport... That is why those matters belong to the competence of the Region, in which the power is shared between the Flemish and French inhabitants of Brussels.

1.3. Intermediary conclusions

The system of competence repartition both respects the need for autonomy of each Community and prevents a divide within the Brussels population. The system avoids a territorial demarcation of the Community competencies in Brussels. As such, it has the advantage of preventing the isolation of subgroups within the city and has as a consequence that all matters related to territory - management, are necessarily of common interest. These matters being of common interest, no party gains by locking the decision-making process for a lasting period of time. Nevertheless, the system does not prevent the emergence of policies directed towards a 'demographic' conquest of the city.

By preventing the establishment of this mechanism of competence repartition, free access for all citizens to the institutions of their choice is guaranteed. Nevertheless, it should be emphasised that this freedom of access might have been reached by other means than by the creation of sub-nationalities. This system prevents the artificial reinforcement of the social meaning of minority/majority relations, but it only suppresses the seeds of discrimination by avoiding the mandatory choice of a sub-nationality (see 1.2. above).

However, this system does not prevent a divide within the political society and has not prevented the disintegration of the bi-community regime. From that point of view, the system is unable to generate real centripetal dynamics. Furthermore, it curbs the fiscal autonomy of the Communities.

1.4. Applicability of these concepts to Jerusalem

A priori, a city like Jerusalem seems unlikely to benefit from the Brussels system of competence repartition. Indeed, the divide within the population is already present. Two distinct nationalities exist despite 30 years of occupation. In addition, the isolation of subgroups has fragmented the city since decades, even centuries.

The Brussels system of competence repartition has essentially a preventive value. It is unlikely to bridge the divides. To legitimise the presence of Israeli in East Jerusalem and the presence of Palestinians in West-Jerusalem is unlikely to curb the isolation of subgroups: on the contrary, it would only increase the tensions between
the two Communities by opposing two strategies of conquest of the city: the Palestinian demographic weapon and the Israeli might.

In addition, Palestinians claim free disposal of their territory. Among other things, they ask for competencies in urban development matters. The concession of this competence, however, implies a repartition ratione loci. A ratione loci competence repartition, unfortunately, implies per se that no competencies remain a matter of common interest to both Communities. Any occasion of tension of decisive deadlock may then result in self-imposed isolation of each Community.

2. The political ties that bind the citizens of Brussels to their respective Community

The political ties that link the Brussels inhabitants to their respective Community are twofold. The first is related to the political representation of Brussels citizens within their respective Community (1). The second is related to the existence of two institutions in the Brussels Region, that exert communal competencies in the Brussels-Capital, under the tutelage of the larger Community institutions: i.e. The French and the Flemish Commission for Community Affairs (FCCA and DCCA) (2).

2.1. Political representation of the citizens of Brussels within their respective Community

Dutch and French-speaking inhabitants of Brussels have been guaranteed the benefit of a special representation within their respective Community where they hold a minority position\(^\text{21}\). This specific representation can be seen on the level of the Government and that of the Parliament.

Different factors account for significant differences between the representation of the Flemish inhabitants within the Flemish Community and the French-speaking Brussels inhabitants within the French Community

2.1.1. The political representation of the Brussels inhabitants on the level of the Government of the Communities

At least one member of the Government of each Community must belong to the Region of Brussels-Capital\(^\text{22}\), namely one out of maximum four members of the French Community's government and one out of maximum eleven\(^\text{23}\) members of the Flemish Community's Government.\(^\text{24}\)

The Brussels member of the French Community Government is the Minister President of the Region of Brussels-Capital. Thus a semi-official link is established between the French Community and the region of Brussels-Capital. This minister exerts important Community competencies, including the tutelage of the French Community Commission. Conversely, the Brussels Minister of the Flemish Community is not a member of the Government of Brussels-Capital. However, during the course of the last two terms of office, this minister was made responsible for co-ordinating the policy concerning Brussels-Capital and supervising (the Flemish
Community Commission) in Brussels'. Besides this competence, he does not exert other important Community competencies. This situation seems to meet the desire of the Dutch-speaking individuals in Brussels that the Flemish Community should be paying more attention to the specificity of Brussels in the implementation of Community policies, but at the same time it reveals the lack of weight of this minister in the basic orientation of Community policies.

In Flanders and Wallonia different political decisions have been taken concerning the choice and the role of the Brussels' Minister. These political choices reveal the political dynamics at stake.

2.1.2. The political representation of the Brussels inhabitants in the Communities' Parliament

Since the 1993 institutional reform, the Parliament of the French and Flemish Communities are not any longer constituted respectively by French and Flemish federal MP's. These Parliaments are now composed of regional representatives, some coming from the Parliaments of the Flemish and the French Region, others coming from the Dutch or French linguistic groups of the Brussels Region. Thus, six out of 124 members of the Parliament of the Flemish Community come from the Dutch-speaking group of the Parliament of the Brussels Region, nineteen out of 94 members of the Parliament of the French Community are elected within the French-speaking group of the Region of Brussels-Capital.

The introduction of Brussels regional MP's into the parliaments of the Flemish and French Communities could have forced those Communities to pay more attention to Brussels regional idiosyncrasies in exercising their responsibilities.

It might be too early to see political pillars specific to Brussels emerge within the Parliament of the French and Flemish Communities. Within the French Community, such a development is not impossible. Beyond the cultural identity which keeps the French-speaking group together, a cultural identity specific to the Walloons is emerging. The absence of a single French identity and the numerical weight of the people from Brussels within the French Community should allow the French-speaking group of Brussels to claim their own identity within the Community Parliament.

Yet, the emergence of a division between French-speaking inhabitants of Brussels and Walloons could increase the Walloon regionalist tendencies too strongly and eventually entail the disappearance of the French Community. This would increase the isolation of the French-speaking people living in Brussels Capital which is enclosed in Flanders. Therefore, the commitment of French-speaking people of Brussels to the only institutional link which binds them to the remaining French-speaking, the Walloons, sterns the emergence of the French-speaking pillar within the Parliament. Within the Flemish Community, the emergence of a Brussels political pillar capable of manifesting itself as such within the Flemish Parliament is a priori out of the question. Besides the weakness of the Brussels representation within the Flemish Parliament, the existence of a strong Flemish identity is a major obstacle to such an emergence. Indeed, within the Flemish parliament, the loyalty of Brussels representatives to the Brussels Region is directly challenged by a very strong sense of
belonging to the Flemish nation. Now, it appears that the Flemish from Brussels have difficulties to assume the ambivalence of their status as members of the Flemish Community and as inhabitants of the Region of Brussels\textsuperscript{27}. As a result, they have some difficulties in defining their own political strategies.

2.2. Autonomy of the French and Flemish Community Commissions a regards their grassroots community

Two entities responsible for matters residing under the French and Flemish Communities in Brussels have been set up: the French Community Commission (FCCA) and the Flemish Community Commission (DCCA). These Commissions were set up to prevent the inhabitants from being dependent only on the Communities and the federal state which could adopt a ruling attitude towards them, disregarding their interests\textsuperscript{28}.

It should be emphasised first that the competencies of the Community Commissions are relatively limited. However, the autonomy of the French Community Commission towards the French Community is very different from that of the Flemish Community Commission towards the Flemish Community. Their respective composition is not different (2.2.1.). The main differences relate to the extent of their respective competencies (2.2.2). This asymmetry has detrimental consequences that should not be underestimated (2.2.3.)

2.2.1. Composition

These Commissions are formed by an Assembly and a College. The Assemblies are composed of French and Flemish members respectively: the linguistic groups of the Parliament of the Region of Brussels-Capital.

The Colleges consist of the Ministers and Secretaries of State from the Government of the Region of Brussels-Capital belonging to the relevant linguistic group. The Prime Minister of the Government of the Region is part of the Community College of the linguistic group he belongs to.

The Brussels Minister of the Government of the Flemish Community and the Brussels Minister of the Government of the French Community attend the meetings of their respective College with a consultative voice. During the last two terms, they have been charged by their Government to supervise the Commissions. Their presence within the Colleges of the Community Commissions ensure a direct link with their Community of origin.

There is thus no fundamental difference between both Community Commissions. Still, it should be pointed out that, de facto, the Flemish Community Commission Assembly includes only ten members, a third of whom is also member of the College of this Commission.\textsuperscript{29} Is a democratic control of the College by the Assembly realistic under such circumstances?
2.2.2. Competence

The Constitution considers three types of competence: the competence as an organising principle, the delegated competence and the transferred competence.\(^{30}\)

2.2.2.1. Competence as an organising principle

The Commission exerts the competence of the organising principle in education, culture, health care and assistance to person-related matters. It is therefore installed to elaborate and implement the programming of the infrastructure required for those matters, generate, administer and subsidise the institutions necessary for education, and initiate and support the initiatives taken in cultural and person related matters. There is no difference in the scope of the matters entrusted to the Commissions. Still, the tutelage exerted by the respective Communities reveals profound differences in the conceded autonomy.

The tutelage of the Flemish Community over the activities of the Flemish Community Commission (DCCA) is very ‘extended’.\(^{31}\) By contrast, the autonomy of the French Community Commission (FCCA) is more ‘extensive’.\(^{32}\) The rule of tutelage discloses the will to consider the FCCA as a full interlocutor rather than a mere subordinated power.\(^{33}\)

2.2.2.2. The delegated competence

Each Community Commission exerts the regulatory competence delegated to each of them by the Parliament of the Flemish and French Community respectively. The Commission acts as a subordinated power through regulations.

The Flemish Community has always refused to delegate power to the Flemish Community Commission. Such a refusal is hard to understand for the Dutch-speaking inhabitants of Brussels. They are favourable to such a delegation that might help them implement the decreetal policies while taking into account the specific situation of Brussels. The refusal can be explained by the dominant political will in Flanders to proclaim the unity of the Flemish people who’s capital city is Brussels. Therefore, the Flemish Community wants to exert all its competencies in Brussels directly, without delegating any of them to the Flemish Community Commission.

Conversely, the French Community had initially used the possibility to delegate regulatory competencies to the French Community Commission. As soon as the Constitution had allowed the transfer of competencies, the initially delegated competencies were transferred.

2.2.2.3. The transferred competence

Since the 1993 constitutional reform, the new article 138 of the Constitution allows the French Community to transfer some of its competencies to the French Community Commission (FCCA) and the Walloon Region.

We are not dealing here with delegated competencies but with transferred competencies. This difference is of importance. In the first case, the FCCA acts as a
subordinated power, whereas in the second case, it rules by decrees as an autonomous federated entity.

Several decrees instantly organised the transfer of some competencies, the most important of which relate to health care and assistance to person-related matters. As a result, the FCCA has gained the potential to develop its own Community policies in the affairs transferred by the French Community.

The fact that the present coalition within the FCCA (PS/PRL/FDF) is different from the one ruling the French Community (PS/PSC) has incited the FCCA to benefit fully of this autonomy by developing specific political strategies as we will see later.

Parallel to that, the Brussels pillar within the French-speaking federal parties has gained prominence. Thus, the PRL has developed a political structure specific to Brussels: a 'regional' one. This 'regional' structure differs from the other federation of the PRL because it has a specific representation within the board ruling the party on the federal level. Similarly, the Brussels' PS has recently organised its own congress after that of the Walloon socialists.

The emergence of the Brussels pillar results from the creation of the Region. At any rate, the autonomy and the specific weight of the FCCA appeared to have strengthened the emergence of regional pillars within the political parties.

2.2.3. Limits of the institutional asymmetry

The respective autonomies of the French and the Flemish Community Commission are profoundly asymmetric. The asymmetric model has rapidly shown that it could endanger the stability of the region. As recent examples illustrate, it generates a centrifugal dynamic.

The French Community Commission (FCCA) adopted a specific political strategy that was perceived by the Flemish Community as provocative. Indeed, the FCCA tried to underline its solidarity with the French-speaking minority isolated in the French unilingual territory around Brussels. The Flemish Community perceived those acts as infringing the 'boundaries' and the 'sovereignty' of Flanders.

In theory, those initiatives should only have an impact in the relationships between the Flemish Community and the FCCA. Politically, the Brussels Dutch-speaking inhabitants were not affected by the adopted measures. Moreover, the Dutch speaking inhabitants of Brussels cannot exert censorship on the decision of the FCCA. Indeed, it is inconceivable that the FCCA, an autonomous federated entity, sees its policy submitted to the censorship of the Flemish Community Commission.

Nevertheless, the tensions between the Flemish Community and the FCCA had repercussions on the Brussels Region. Some Flemish political parties put pressure on the Flemish ministers of the Government of the Brussels' Region in order to jointly react, united with the Flemish Community. The weakness of the Brussels Flemish political pole explains why neither the Brussels' representatives within the Flemish Parliament, nor the Flemish Brussels Ministers had the political courage to distance themselves from the political will expressed by the Flemish Community.
Subsequently, it became obvious that discussions on these problems would arise inside the Parliament of the Region. Indeed, even if the FCCA is an autonomous federated entity, we should not forget that the French representatives of the Government and Parliament of the Region are also part of the College and the Assembly of the FCCA.

This duality of function has led the Flemish Brussels representatives to consider those unilateral measures taken by the FCCA as signs of a ruptured solidarity between the representatives of Brussels.

The episode has shown the double disadvantages of this asymmetry. The dependence of the Dutch-speaking representatives on Brussels makes it difficult for them to distance themselves from the political logic dictated by the Flemish Community. As a result, their specific manoeuvring room as Brussels inhabitants towards the regional policy is considerably reduced and their ability to make concessions to reach co-decisions is weakened. The Flemish Brussels inhabitants seem to depend on the political strategies dictated from outside. Moreover, the inability of the Flemish in Brussels to distance themselves from the initiatives of the Flemish Community that are hurting the French Community’s sensibilities, jeopardises the political solidarity inside the Brussels region. For this reason, the management of the city is complicated.

Conversely, the autonomy of the French-speaking Brussels inhabitants from the French Community has allowed the emergence of a Brussels political pillar that expresses itself fully through the FCCA. Nevertheless, the FCCA moves sometimes hurt the Flemish sensibility. The Flemish Brussels inhabitants resent these unilateral moves and consider them to be signs of a ruptured solidarity between the Brussels political representatives of the Region.

Now, large manoeuvring room for Brussels’ representatives and a strong solidarity between them are both fundamental for the development of a regional pillar to overcome the divides between the French and Dutch-speaking inhabitants of Brussels. In the absence of those factors, the joint decision process inside the region is rendered more complicated.

The Flemish Brussels representatives are not puppets directed by Flanders, even if their attitude within the Brussels Regional Government is sometimes influenced by Flanders. In some cases the Brussels’ Flemish parties express views that differ from those held by their federal or community colleagues. This evolution reflects the blossoming of a Flemish Brussels political pole. The incentive of the FCCA for moderation originates in the desire of the French-speaking inhabitants of Brussels to have a Region that works. Indeed, in absence of such moderation, the joint decision-making process will stand still. Such a standstill means the challenging of the existence of the Brussels Region. Now, the existence of such a Region provides the best guarantee for autonomy against the autonomist and annexation drive of Flanders for the majority of French-speaking inhabitants of Brussels, which is situated like an enclave in Flanders.

A second factor for moderation is that power sharing at the regional level is perceived as the counterpart of power sharing on a federal level. If the former is to be
questioned, this will have repercussions on the latter. The political compromise and the fear of Brussels eventually being annexed by Flanders thus allows the Brussels institutions to work correctly.

At the present time, a new balance of power is taking shape. The Flemish Community questions the present statute of the Brussels Region with the purpose of transforming it into a subregion under bi-community rule\textsuperscript{40}. As a countermove the French-speaking Brussels representatives have multiplied their contacts with the Walloons in order to define common political positions and reinforce the Brussels - Wallonia axis, while respecting the regional facts. It remains to be hoped that the slow emergence of the Flemish political pillar will not fade away as a result of a closer cooperation between Brussels and Wallonia. From that point of view, the development of such an axis should be carried out carefully to respect the current position of the Flemish representatives within the Region. If not, the Flemish representatives in Brussels will have no alternative then to submission to the political pressures of the Flemish Community. Such ties of dependence will threaten the joint government of the Region.

2.2.4. Applicability of the Brussels reality to Jerusalem

Jerusalem is marked with by decades of conflict and frustration between two nationalist movements. There is no clear-cut evidence that the concession of an institutional autonomy to Jerusalem Palestinians and Jerusalem Israeli from their respective state or state-to-be is beneficial. Such an institutional autonomy will be advantageous only to the extent that the newly developed mixed institutions in which the Jerusalem inhabitants will share the power and are supported from the inside by the Jerusalem inhabitants whatever their ethnic origin.

If that was the case, the inhabitants of Jerusalem might distance themselves from the political strategies dictated from the outside thanks, to this institutional autonomy and gain, as a result, specific manoeuvring room, allowing the development of a local political project that can transcend the national identities. At this stage, however, such a political project remains highly hypothetical.

The Jerusalem inhabitants will probably find it extremely difficult to dissociate themselves from their respective Communities of origin. Tensions between the two (future) states will \textit{ipso facto} affect the stability of mixed institutions that would be established in Jerusalem. The lack of a federal structure within which the two (future) states may develop solutions increases this risk even more.

Even tensions not-related to Jerusalem between the two (future) states will have an impact on the stability of mixed institutions. Both will be tempted to initiate or to exploit decisional locks arising within the Jerusalem mixed institutions. Any effort to solve the decisional deadlock might be at the cost of compensations on issues not related to Jerusalem. As a consequence, the joint rule of the city will be very problematic.
3. Conclusion

The ties linking the inhabitants of Brussels to their Community influence the mechanisms of joint decision. Their analysis discloses that the balance of the Brussels institutional system depends on several factors specific to the political and institutional situation in Brussels. Several factors have facilitated the 'Brussels' miracle.

The first is related to the impossibility to split Community competencies in Brussels along the classical criteria ratione loci and ratione personae. Indeed, the French and Dutch-speaking inhabitants of Brussels are not located in a specific part of the Brussels territory. The Constitution has decided, for political reasons, to preclude the creation of subnationalities.

In the bilingual territory of Brussels-Capital, the Flemish and French Community are only competent with regard to the institutions established on that territory and which, because of their activities or organisation, must be considered as belonging exclusively to the one or the other Community.

The Communities are thus not competent in Brussels on a part of the territory, but they are competent on the entirety of the territory. As a result, the presence of both Dutch and French-speaking citizens is legitimised throughout the Brussels territory. Such a repartition of competencies prevents the isolation of subgroups as well as conflicts of influence aimed at the occupation of the territory. Still, it does not prevent the development of strategies to conquer the city by demography.

The impossibility to rely upon a repartition of competencies ratione loci has the further advantage that all matters related to ratione loci administration, such as the economy, urban development, transport, are necessarily of common interest for both Communities as they are related to Flemish, as well as to French-speaking citizens. Competencies in these matters have been attributed to the region of Brussels-Capital city within which Dutch and French-speaking Brussels inhabitants share the power. Even if intense tensions originate from specific issues, they never increase to the point that a decisive deadlock is preferred to giving up a claim considered to be unacceptable by the other party.

The system of competence repartition ratione personae has been ruled out by the Constitution, which prohibits the creation of sub-nationalities. As a result, the individual is not locked into an institutional system based on a difference of relatively little importance for him as long as he is free to choose the Flemish, French or bilingual institutions that he prefers. By doing so, this system avoids the artificial reinforcement of the social meaning of minority/majority relations.

This system of repartition of competencies has its own limitations. It does not apply to political representation as all the political parties necessarily include exclusively French or Dutch-speaking citizens. It has also failed to prevent the disintegration of the bi-community regime, as an impressive number of previously bi-community institutions has chosen a single community regime. This behaviour somehow denies the existence of a real mixed Brussels identity. Finally, the system significantly curbs the fiscal autonomy of the Communities.
The second condition for success of Brussels institutions is related to the ability of regional political representatives to keep at a distance from the political strategies and manoeuvres of their respective Community. As a result, they are able to reach the necessary compromises with in the region. This condition is important as the Region undergoes contradictory political pressure from the Communities. The Flemish Community disputes the status of the Brussels Region: the Region has a French-speaking majority perceived as a long-term threat to the Flemish presence in Brussels, whereas the Flemish minority is dominated by the French culture. The Flemish Community also expresses annexation aspirations towards Brussels, which, historically speaking is a Flemish city, situated in Flanders much like an enclave.

Conversely, the French Community supports the status quo. The existence of the Region is felt to be an efficient guarantee to the French-speaking inhabitants of Brussels, isolated in Flanders.

In this context, it is worth mentioning that the autonomy of Brussels inhabitants towards their Community of origin does not have the same substance. On the Flemish side, several obstacles prevent the development of a political pillar in Brussels which can express a political view different from those of the Flemish Community. First of all, the number of Dutch-speaking Brussels political representatives is too low to influence the political decision-making within the Flemish Community, even if efforts are made to adapt these policies to the specific situation in Brussels. The strong feeling, furthermore, of belonging to Flanders competes with the loyalty of the Dutch-speaking inhabitants of Brussels towards the region. Finally, Flanders refuses the slightest autonomy to the Brussels Flemish Community Commission. Such autonomy might provide to Dutch-speaking Brussels political leaders a forum for political expression where differences of interest with the Flemish Community do not compete with the Flemish sense of identity and its associated institutional strategies. Experience has indeed shown that pressure exerted directly by the Flemish political parties on the Flemish Brussels political leaders might be so intense that the political behaviour of the latter is influential.

On the French-speaking side, the reverse factors have allowed the development of a Brussels political pillar strong enough to assert itself as such: the number of French speaking representatives within the Parliament and the Government of the French Community, the absence of a single French-speaking identity and the transfer of several Community competencies to the French Community Commission.

The asymmetry of the Dutch and French-speaking political pillars in Brussels has precarious limitations. The autonomy conceded to the French Community Commission is such that their political views and initiatives are felt to be threatening by the Flemish Community. Even if the Dutch-speaking Brussels inhabitants are not directly concerned by these views or initiatives, they are faced by a dilemma: either resist political pressure of Flanders which requires a certain political courage or surrender to this pressure and threaten to lock the decision-making process within the Regional Government.

This asymmetry generates a centrifugal political dynamics. The more the French-speaking Brussels representatives feel threatened by the challenges of the
Flemish Community over Brussels, the more they are tempted to adopt more radical French political positions inside the French Community Commission. The Dutch-speaking Brussels representatives, excluded from these political attitudes, feel isolated within the Region. Their temptation to surrender to pressure from the Flemish Community and to adopt the Flemish Community's strategies increases, complicating thus the joint government of the Region.

Until recently a third factor curbed the centrifugal dynamics of the latter and contributed thus to the Brussels political equilibrium. This factor is in the interest of all Brussels representatives, whatever their linguistic origin for the existence of the Brussels Region. The Dutch-speaking inhabitants are overrepresented and take advantage of the power-sharing within the Region.

The French-speaking Brussels inhabitants perceive the existence of the Region as a critical guarantee against their isolation within Flanders. The latter is considered rightly or wrongly as autonomist, annexationist and little inclined to make some room for the French-speaking inhabitants, as illustrated by the desire of the Flemish Government to suppress the linguistic guarantees conceded to the French-speaking inhabitants of the periphery.

As a result, the French-speaking Brussels political leaders are aware of the fact that they cannot antagonise the Flemish sensibility if they want to keep Flemish Brussels inhabitants ready to make the concessions necessary for an efficient administration of the region. They are aware that the principle of power sharing within the region cannot be questioned any more. The power-sharing at the Brussels regional level, where the Flemish are a minority, is the price that had to be paid for the power-sharing at the federal state level, where the French-speaking are a minority.

This equilibrium, however, is threatened by a recent evolution. A new power ratio is developing. The French-speaking inhabitants of Brussels feel threatened by the innuendoes in the Flemish Government's rhetoric challenging the status of the Brussels Region. The Flemish Community intends to subdivide the region into a sub-region completely administrated by the two Communities. Therefore, they multiply the contacts with the Walloon Region with the intention of defining common positions and reinforcing the Wallonia-Brussels axis which respects the regional peculiarities. It remains to be hoped that the slow and timid emergence of the Brussels Dutch speaking pillar will not disappear as a result of the effort to bring together Brussels and Wallonia. Therefore, the development of the Wallonia-Brussels axis should carefully respect the present political advantages conceded to the Dutch-speaking Brussels inhabitants.

It appears clearly that the Brussels equilibrium is fragile and precarious. It depends more on factors related to the political context, and thus prone to evolutions with time, than upon a simple institutional system transferable at wish. Still, this analysis may shed some light on the Jerusalem question. Enormous differences separate the two situations. Firstly, Jerusalem is characterised by a series of economic, cultural and religious divides translated on the territory by the self-imposed isolation of each Community and the development of the ghettos. From that point of view, the Brussels system of repartition of Community competencies will probably be of little
use. This system has mainly preventative qualities: it will never succeed in bridging pre-existent divides. Worse even, the lack of administrative borders would generate two opposite strategies of city conquest: the Palestinian demographic weapon on the one hand and the Israeli financial power on the other hand.

As each of the two Communities is geographically isolated in one or more parts of the city, no policy is a priori of common interest, not even these related to territory administration. As a result, the risk of self-imposed isolation of each Community in case of decisive lock is immense.

Secondly, two exacerbated antagonistic kinds of nationalism coexist in Jerusalem. It is therefore very unlikely that a political pillar specific to Jerusalem will ever develop and contribute to the stability of mixed institutions within which Jerusalem inhabitants might share the power. The development of such a pillar remains hypothetical even if Jerusalem inhabitants benefited from a maximum representation within the bodies ruling their respective states, or even if competencies were transferred to Commissions analogous to the Community Commissions in Brussels. The absence of such a political will to maintain the city’s unity stems from strategic and symbolic reasons. Should a negotiated statute ever emerge, it will result only from external political pressure linked to the necessity to reach a global peace agreement. The resulting mixed institutions will therefore enjoy only minimum internal support. The situation which is in stark contrast to that of Brussels leads to the evidence that the stability of the mixed institutions within Jerusalem will depend on the good will of the two (future) states as a result of the lack of a political pillar proper to Jerusalem.

Several consequences follow this evidence which is relevant to the success of institutions patterned after the Brussels model. In the first place, the stability of the mixed institutions will depend mainly on the understanding between the two (future) states. In the absence of a federal structure it will be of critical importance to develop efficient mechanisms of cooperation and even of joint decision-making processes for all problems concerning the two states, whether or not they are related to Jerusalem. Short of that, as illustrated by the Brussels experience, the risk for tensions outside Jerusalem to be transferred to the mixed institutions is very high and might complicate to a large extent the joint administration of the city.

In the second place, it will be important to make room for a tutelage over the mixed institutions by the two (future) states on a parity basis. In the absence of a local political pillar supporting the mixed institutions from the inside, a decisive lock means that the two (future) states will replace these mixed institutions. As a consequence, each partner in the mixed institution is aware of the fact that he will lose the decisional power in case of a decisional deadlock.

Finally, and perhaps more importantly, the mixed institutions should benefit from the unconditional support of both (future) states. This support rests on two prerequisites. Each of the two parties should recognise the legitimacy of the rights on Jerusalem of the other. In addition, the keeping of the city’s unity should be recognised as of common interest by the two (future) states on the same footing. However, such an equal footing will be real only if Palestine has been recognised as a
sovereign state. Once the two states have defined what is of common interest to the two communities in Jerusalem, the threat of reconquest of the city will fade and both parties will be able to sacrifice their immediate interests to the benefit of the common interests. Of course, leaving that responsibility to the two (future) states implies the risk of a new division of the city. It is only at the expense of that risk that the mixed institutions will have a real chance of success.

Notes

1 We shall disregard the existence of the German Community. Indeed, its creation did not directly influence the situation in Brussels.

2 A judicial review is carried out on the conformity of these ordinances with the special majority federal law concerning the Brussels institutions and with the Constitution, barring articles 10, 11 and 24 thereof and the rules related to the sharing of competencies between the State, the Communities and the Regions. In case of non-conformity, the jurisdictions will refuse to apply the ordinance. Such a judicial review does not exist concerning the decrees.

3 Ordinances can repeal, amend or replace legislative acts in vigour (art. 7 of the special majority law, 12 Jan. 1989).

4 A specific representation of those linguistic groups can be found in the whole legislative procedure. As a consequence, at least one third of the members of the Parliament Council belong to the smallest linguistic group. This group must also be represented in each Commission of the Parliament by, at least, one member.

5 The 'alarm-bell procedure' allows each linguistic group to suspend the legislative procedure by a vote of three quarters of the total number of its members when a government or private member's bill jeopardises the relationships between the communities.


7 For education and cultural matters.

8 For health care and person-related matters.

9 The Communities are not competent for institutions, which as a result of their activity or their organisation, are not solely attached to one of the two Communities. The Joint Commission for Community Matters exerts competencies in health care matters and those person-related matters which are not covered by the Communities, i.e. those matters related to persons or institutions that cannot be exclusively attached to one of the two Communities as a result of their organisation. These matters are called the 'bi-person-related' matters. The Joint Commission for Community Matters is a federated entity formally independent from the Brussels Region. It acts also by way of ordinances and is composed of bodies gathering almost the same elected persons as those of the Brussels Region. The federal State remains the only competent body for bicultural matters: it is competent for cultural matters towards individuals and towards institutions that are not exclusively attached to one of the two Communities as a result of their activity. It remains also competent in matters related to language use in Brussels.
These institutions are ruled by the JCC when ‘bi-person-related’ matters are concerned and by the federal State when it concerns bicultural matters.

The composition of the Government, the double majority votes and the alarm-bell procedure, require that the Parliament be organised into two linguistic groups.


The federal State remains the only competent body for bicultural matters: it is competent for cultural matters towards individuals and towards institutions that are not exclusively attached to one of the two Communities as a result of their activity. It also remains competent in matters related to language use in Brussels.

The two linguistic groups of the parliament of the Brussels Region form the Assembly of the JCC. Furthermore, the five Ministers of the Government of the Region are part of the College of the JCC. Nevertheless, the Minister President has only a consultative voice. Furthermore, the two Brussels Ministers of Government of the Communities attend the sessions of the College with a consultative voice.

Nevertheless, the JCC ordinances, unlike those of the Region, need a majority in each of the two linguistic groups.

From 1989 to 1994, only 5 projects and 11 propositions of ordinances had been submitted in the area of health care and assistance to person-related matters. Only 5 ordinances were adopted by the Parliament, two of which on the basis of a proposition, and 38 regulations were adopted by the Government, 24 of which were related to the agreement or financing of centres, service-centres or institutions working in health care and assistance to person-related matters.

The difficulty of a global policy has been exacerbated by the way in which the responsibilities have been shared between the ministers within the Joint Commission for Community Matters and the Flemish Community Commission. Within the college of the Flemish community, for instance, a socialist party minister is competent for health care. Within the College of the JCC, the respective competencies are inverted. See: Lentzen, E., Mabille, X., Blaise, P. 1989. ‘L’élection régionale bruxelloise du 18 juin 1989’ in Courrier hebdomadaire du CRISP, nr. 1243: 38. The same asymmetry is still present during the present legislature. Furthermore, the repartition of competencies among ministers in the JCC is split in such a way that each competence depends from the joint management of ministers from distinct linguistic groups. Regulation of the JCC of 13 July 1989 and 5 July 1995 fixing the repartition of competencies between the members of the Joint College. As a result, each initiative in this sector requires a prior agreements that exceeds the linguistic and the ideological divides.

It should be mentioned that the city boroughs, all of which depend on the bi-community regime as a result of their public authorities status, tend to create private institutions in the sector of family of social assistance in order to avoid the bi-community regime (Example: the ‘assistance to families service’ of Schaerbeek and Koekelberg, the ‘service of social assistance’ of Watermaal-Bosvoorde, the ‘family house’ of Saint-Josse, ....
No linguistic constraints may be imposed on private institutions. Nevertheless, on the Flemish side, some political pressure was exerted to impose such constraints. Indeed, those institutions depend on the bi-community regime, but some of them are unable to provide services in Flemish. The only way to solve this would be by way of imposing the regulation which stipulates that a certain number of Dutch-speaking employees has be taken on in these institutions.

Prior to the creation of the region, most of the health care and social institutions in Brussels depended on the bi-community regime administered by the federal state. When the Region was created, 15 institutions and organisations of the private sector had opted for the Flemish single community regime, whereas 335 still depend on the bi-community regime. (See 'Pleins feux sur la Région de Bruxelles Capitale', in Bruxelles-Informations sociales, septembre 1989, n°91, p. 5).

These numbers have remained relatively stable since, except for the closure of numerous geriatric homes (50 between 1989 and 1996) under bi-community regime, mainly as a result of financial difficulties. The relative stability of these numbers can be explained by the fact that no financial transfer from the Joint Commission for Community Matters to the Flemish or French Community is any more granted to the private institutions that decide to leave the bi-community regime. Indeed, only those which had chosen for a single community regime before 30 June 1989 saw their financial support paid by the Joint Commission for Community Matters transferred to the Communities. (art. 65§ of the law of 16 Jan. 1989 concerning the financing of the Communities and the Regions).

The Dutch and French-speaking inhabitants from Brussels account for respectively 3.5% and 2.5% of their Community.

Article 63 of the special law on the institutional reform of 8 August 1980.

The effective number of the members of the Government of the Flemish Community was raised to 8 during the 1989-1995 legislature and is now 9.

Such a low representation is explained by two factors. The Flemish inhabitants of Brussels represent only 3.5% of the Flemish Community. The second factor is the merger of Flemish regional and community institutions.


Such a scenario is not impossible since article 138 of the Constitution allows the transfer of the French Community competencies to the French Community Commission, on the one hand, and to the Walloon Region on the other hand.


The French Community Commission is composed of 65 MP's.

Article 166, § 3, 1° to 3° of the constitution and articles 64 and 65 of the special majority law of 12 Jan. 1989.

A mere decision of the Flemish Government is sufficient to make void both the decision of the College and the regulations of the Assembly (Article 4 of the decree of 5 July 1989 of the Flemish Community concerning the tutelage over the Flemish Community Commission). The same applies for the approval of the accounts and the budget of the Commission (art. 8, 1°). Moreover, a substitution tutelage is organised for the execution of measures imposed by any superior rule or any judgement (art. 9 and 10).
32 Decree of 18 June 1990 of the French Community concerning the tutelage over the French Community Commission.
33 The decree organising the tutelage of the French Community concedes large manoeuvring room to the FCCA. The decree voted by the French Community on 18 June 1990 and organising the FCCA’s tutelage, makes a distinction between the tutelage over the Assembly (a) and the tutelage over the FCCA (b). a. Tutelage over the Assembly: A ‘permanent dialogue Commission’ is referred to in case the assembly suspends a regulation (article 9). This Commission equally composed of ministers of the College and the Community Government, provides the Government of the French Community with a stated opinion. Except in case of a contrary opinion of the ‘permanent dialogue Commission’, the Community Parliament may decide to make void the deferred regulation. A similar procedure is provided for the approval of the budget and the accounts (article 10). The power to make void the regulations of the Assembly is thus in the hands of the Community Parliament and not in those of the Community Government. Besides, this power is submitted to the approval of the ‘permanent dialogue Commission’ that is composed on a parity basis between Brussels regional ministers and community ministers. b. Tutelage over the College: The Brussels minister within the Government of the French Community who is in charge of such tutelage, is also the Minister President of the Region of Brussels. His role within the Region and his representativeness give him a great deal of autonomy in exercising supervision.
Additionally, special measures are attached to the transfer of supervision to the minister. In case the minister formally records in the meeting minutes that he gives up supervision, the decision will be permanently enforceable notwithstanding later opposite decisions by the government of the French Community.
36 The ‘alarm-bell procedure’ is only conceivable in a similar assembly. Between assemblies, the law of 9 Aug. 1980 provides prevention and settlement procedures in case of conflict of interest. But, this law is not affected by the conflicts of interest between DCCA and FCCA. Indeed, the DCCA is not a federated entity. Moreover, this law has not been adapted yet, to include the conflicts of interest between the FCCA and the other federated or federal entities.
37 Indeed, the president of the SP exerted pressure on his minister with the aim of introducing a common claim to the State Council (highest administrative jurisdiction) to rescind the decision of the FCCA to setting up a consultative Council for the surrounding communes of Brussels. (1996. Le Soir. 16 Feb.: 4).
38 However, the FDF-PRL seems to adopt an inverse strategy, by using the FCCA as a tool to express the French character of Brussels.
39 See the ‘Draft Flemish Constitution’ of Clement, Pas, Seutin, Van Haegendoorn and Van Nieuwenhoven that received the price Emiel van der Gucht (Sep. 1996) in the Flemish Parliament.
The transfer of competencies of the French Community to the Walloon Region and the FCCA has permitted the refinancing of the French Community. Indeed, this transfer of competencies was achieved without a simultaneous transfer of the budgetary means to finance these competencies.
THE FINANCING OF THE REGION OF BRUSSELS-CAPITAL

Jacqueline De Mol (ULB)

Introduction

This report will present and analyse of the financing mechanisms of the Brussels-Capital Region. It is divided into three parts:
- A general description of the financial system put into place by the special law of 16 January 1989 concerning the financing of the Communities and the Regions;
- An analysis of the implications of the institutional reforms of 1993 on the public finances of Brussels;
- A report on the structural weaknesses of the financial systems which are at the disposal of the Brussels-Capital Region today. This report will stress the obvious limits of the actual system and will explain what would be the most favourable direction to be taken in case of a possible reform.

1. The resources of the Region of Brussels-Capital

Since the special law of 16 January 1989 concerning the financing of the Communities and the Regions came into force, the budgetary credits of the Brussels-Capital Region can be divided into 4 categories:
- The allocated part of the taxes on physical persons;
- The regional taxes;
- The non-fiscal taxes;
- The loans.

Each of these categories will be looked into separately.

1.1. The allocated part of the taxes on physical persons

1.1.1. General budgetary principles established by the special law of 16 January 1989

The new financial system of the Belgian Federation is based on two complementary principles:
- the principle of "autonomy and financial responsibility" of the federal entities, in virtue of which they must obtain their means in an autonomous way in the framework of their expenditures and they are entirely responsible for the consequences;
- the principle of "reversible federal solidarity" implemented through mechanisms of solidarity intended to protect the Regions that are less favoured by fiscal income.

In the end this system, which is based on the two above mentioned principles, aims at attributing part of the taxes on physical persons to each Region. It also foresees a joint liability to the benefit of the Region with a fiscal income which is inferior to the national average. The choice of the IPP (tax on physical persons) is
justified because this type of tax is easy to implement as Art. 7 of the special law of 16 January 1989, which stipulates that the ‘taxes on physical persons (is considered located) where the taxpayer resides’.

Hereafter, we will discuss the negative consequences this solution has on the budgetary balance in Brussels. To conclude this brief overview about the general principles of the mechanism attributing a part of the IPP to the Regions, I would like to stress the fact that the IPP is in no way a regional tax: it is a joint tax according to Art. 6 of the special law of 16 January 1989, that is to say ‘a national tax’:

1) collected on a regular basis all over the territory;
2) part of this tax is attributed to the Regions;
3) Based on the localisation of these taxes, the Regions have the authority to raise a sur-tax, and as of 1 January 1994, they also have the right to give a discount on these taxes, in as far as they do not go beyond the attributed amount.

1.1.2. Methods of application of these principles

The method explained above is not yet applied to its full extent. Indeed, in order to understand the system that is being used today, we need to take into consideration the existence of a transitory period of 10 years (1.1.2.1.) on the one hand, and on the other hand, the will of the special legislator to make the Regions participate in the reorganisation of the public debt (1.1.2.2.). Finally, we would like to describe the mechanisms put into place during the transitional period in order to permit an adjustment of the share of the IPP attributed to the Regions (1.1.2.3.).

1.1.2.1. Transitory period of 10 years

In Articles 12 and following, the special law of 16 January 1989, foresees a transitional period from 1989 until 1999. The objective of this transitional regime is to permit a less brutal evolution towards the new regime, which will to full extent come into effect as of the year 2000. Before, some Regions had been receiving means much superior to those that would have been given according to a system established by the special law of 16 January 1989. The immediate application of this system would therefore have created considerable budgetary difficulties, especially in the Walloon Region. This justifies why the special legislator has preferred a relatively long period of adaptation.

1.1.2.2. The Regions participate in the improvement of the public debt

The will to have the Regions and Communities take charge of an equal part in the effort to improve the situation of the Belgian public finances, explains the introduction of a rather complex mechanism in the transition regime, established by of Articles 13 through 32 of the special law of 16 January 1989. In virtue of this, the federal state only finances part (85.7%) of the competencies which it transfers to the federal entities that are therefore obliged to borrow the complementary resources (14.3% of the expenditures relating to the regional powers). However, this does not
mean that the Regions are finally forced to support the responsibility of 14.3% of the matters attributed to their responsibilities: indeed, the federal state takes 85.7% of the annual instalments for its account in case of regionalised competencies in 1988 and 100% of the competencies which were transferred earlier. It appears therefore that the Regions participate since 1990 in the stabilisation of the public debt, supporting 14.3% of 14.3% (meaning 2.04%) of the expenditures concerning the responsibilities transferred in 1988.¹

1.1.2.3. Adjustment of the share of the IPP attributed to the Regions

The allowances set in 1989, based on a certain allowance for each set of competencies have been adapted each year between 1990 and 1994 according to the fluctuation rate of the average index of the consumer prices. Since 1994, additional means come from the yearly adjustment of the global amount of the IPP (taxes on physical persons) attributed to the Regions in case of growth of the GNP (gross national product) (Art. 12, § 1, 3°bis and 32 bis, § 3 of the special law of 16 January 1989, as it has been modified by the special law of 16 July 1993). These additional means are divided amongst the Regions based on their respective shares in the total income of IPP (taxes on physical persons).

1.2. Regional taxes

Article 3 of the special law of 16 January 1989 stipulates that ‘following taxes are regional taxes: 
1) Taxes on games and bets;
2) Taxes on automatic equipment for amusement;
3) Taxes on start up of places where fermented drinks are served;
4) Taxes on inheritance;
5) Real estate taxes.
6) Registration taxes on the transmission of real estate subject to payment.
7) Traffic tax on automobiles;
8) Taxes, equated with the charge of excise, put on consumption goods that are considered harmful, the so-called ‘ecotax’.

The competence of the Regions concerning these different taxes is not entirely identical:
- For the first three, the Regions freely fix the rate of taxation, the basis of taxation and the tax exemption;
- As far as taxes on successions and real estate are concerned, the Regions determine the taxation rate and the exemptions;
- The same goes for the registration taxes as soon as their income has entirely been refunded to the Regions;
- On the other hand, only the federal authority is competent to determine the taxation rate, the basis of taxation and the exemptions of the traffic tax;
- And finally, the federal authority can modify the rate of taxation, the basis of taxation and the exemptions of the ecotaxes only with the agreement of the Regions.
Moreover, we must underline that the Regions have an implicit fiscal competence which permits them to raise specific taxes linked to the regional competencies. An example is the existence of Walloon and Flemish taxes on water or environment, as well as the tax in the Brussels Region used to fight nuisances.

1.3. Non-fiscal income

The non-fiscal income at the disposal of the Brussels-Capital Region is threefold: the "mainmorte", the "droit de tirage" concerning employment and the "various income".

1.3.1. "Mainmorte"

The mechanism of the "mainmorte" is established by Article 63 of the special law on financing of 16 January 1989, as modified by the special law of 16 July 1993, which states as follows: "A special credit is included in the budget of the Ministry of the Interior and Public Functions in favour of the municipalities which have properties on their territory which are exempt from real estate tax. The credit, corresponding to that of the municipalities of the Brussels-Capital Region, is transferred to that Region. The real estate properties exempt from real estate tax, as defined in § 2 of Article 63, are mainly foreign embassies, headquarters of international organisations or federal ministries or ministries belonging to certain federate entities. It is therefore easier to understand that they are particularly numerous on the territory of the Brussels-Capital Region."

The mechanism of the "mainmorte" constitutes in a certain way a compensation granted by the federal authorities to the Region because of its diminished fiscal income caused indirectly by its status of capital of the Kingdom.

1.3.2. The "droit de tirage"

"Droit de tirage" means the financial participation of the federal authorities in work and employment programs. The system is organised in Article 35 of the special law on financing of 16 January 1989, which permits, under certain conditions, that a corresponding amount of unemployment indemnities be given to each Region concerned, equivalent to the amount of full time employment created by this Region.

1.3.3. Miscellaneous returns

Various non-fiscal returns regroup a number of resources, such as receipts on sales of real estate, reimbursement of the municipalities to the Region of certain credits, and donations and possible legacies.

1.4. Loans

Article 49, § 1. of the special law on financing of 16 January 1989 establishes that "The Communities and Regions can obtain loans". This law applies to all the
federal entities, and therefore also to the Brussels-Capital Region, which is therefore allowed to cover its budgetary deficits by means of loans. This fact must however be moderated by two remarks. Firstly, alinea 2 of § 2 of Article 49, is somehow attenuating the financial autonomy of the federal entities because following provisions are made: ‘The conditions and the issuing of each public loan are submitted to the approbation of the Ministry of Finance. In case of refusal by this Ministry, the government involved may demand that the case be brought before the Council of Ministers for a final decision.’ In order to secure some co-ordination between the financing policies of the different components of the Belgian federal state, the special legislator granted the Council of Ministers what we may call ‘a highly administrative supervision.’ On the other hand, we need to mention § 6 of Article 49 of the special law of 16 January 1989, which foresees the creation of a department within the Supreme Council for Finances called ‘Financial requirements of the public authorities’.

Each year this section gives advice on the financial requirements of the public authorities and may, as the text of the law stipulates, ‘give advice on the opportunities to limit the capacity of the loans of the public authority, in order not to undermine the economic union and the monetary unit. This department also advises on how to avoid any disruption of the monetary balance - internal and external - and a structural deterioration of the financial requirements’. Based on this advice, the King can ‘limit the loan capacity of a Community or a Region for a maximum of two years.’

In other words, the will to maintain a certain consistency among the financial policies of the different Belgian public authorities, as well as the installation of compulsory (‘coercitif’) mechanisms aiming to ensure that they all respect the European restraints concerning budgetary deficits, have induced the special legislator to considerably limit the financial autonomy of the Regions and the Communities in as far as their debts are concerned.


2.1. Introduction

The in thorough analysis of the origin of the institutional reforms that occurred in Belgium in 1993 is certainly not the purpose of this study. First of all, we will only very briefly present the budgetary situation of the federal state of Belgium at that time. It has considerably influenced the constitutional and legislative modifications of 5 May and 16 July 1993. Then, we will present the results of these modifications.

2.1.1. The financial crisis of the French Community

The reforms of 1993 have been elaborated in a budgetary environment dominated by a deep and structural financial crisis of the French Community. Competent in different matters in the non-commercial sectors, such as education, the French Community had to face considerable expenditures with means that were insufficient and difficult to expand. We would like to remind the reader that, contrary
to the Regions, the French and Flemish Communities do not have a proper territory, which makes it practically impossible for them to exercise their fiscal competence according to Article 170, § 2 of the Constitution.

The collection of community taxes on the territory of the Brussels-Capital Region would require to establish a distinction between the inhabitants of Brussels according to their community of affiliation. This would result in the creation of sub-nationalities for the inhabitants of the capital, which is totally unacceptable in the actual status of the Belgian law. The concept of ‘not having a territory’ characterises the whole financial system of the Communities as it has been organised after the reforms of 1993.

Without going into details, which would lead us too far from our initial project, it is useful to mention that the Communities have resources today which can be schematically divided into three categories:

- the parts attributed by certain taxes and fees (tax on the physical persons, VAT and radio and television tax)\(^2\) collected in the whole national territory by the federal authority: it is interesting to note that returns that can be traced (IPP and radio and television tax) and collected in a unilingual territory, are entirely given to the corresponding Community, whereas those coming from the Brussels territory are contractually divided between the two Communities: 80% for the French Community and 20% for the Flemish Community. The VAT, however, which cannot be localised, is divided between the Communities according to a criterion based on their respective number of pupils;
- the non-fiscal returns;
- the loans.

The unavoidable limitation of the means of the Communities, which is the result of the difficulty they encounter in exercising their fiscal competence, has never been a problem in the Northern part of the country. Since 1980, the competence of the Region is indeed exercised by the Flemish Community and from that moment the resources of both entities have been put together in one budget, permitting the allocation of the regional resources, namely the fiscal resources, to the Community expenses. The French Community on the contrary remained institutionally and therefore financially isolated, which explains the deep and structural crisis we mentioned above.

2.1.2. The solution brought by the institutional reforms of 1993

The structural re-financing of the French Community could \textit{a priori} be seen from two different angles: both have, parallel to the solution used in the Northern part of the country, the competencies of the Walloon Region exercised by the Community with a ‘budgetary merger’ of these two entities, or, to the contrary, allow the exercise of the community powers by the Walloon Region and the French Community Commission. Various arguments, the report of which would go beyond the framework of this study, have brought the constituent to prefer the second possibility now established by Article 138 of the Constitution. This mechanism has
allowed the adoption of two series of three decrees of transfer, mainly concerning matters regarding the individuals: public health, family, social security, welcome and integration of the immigrants, handicapped people or senior citizens, as well as all other related matters. It is however advisable to say that not all matters concerning individuals have been transferred. On the other hand, and although maybe less important, cultural matters and education matters have also been transferred. The result is a division of the competencies, which is hard to justify by objective arguments and which is incapable of guaranteeing a homogeneous policy.

2.2. The budgetary aspects of the reform

The transfer of the exercise of certain competencies of the French-speaking Community to the Walloon Region and the French Community Commission involves, of course, the question of their financing. Without getting too much into tedious and little instructive details, we need to remember that it is based on two supplementary mechanisms: an allowance from the French Community to its two partners and a "droit de tirage" of the French Community Commission on the budget of the Brussels-Capital Region.

Since 1994, the French Community annually grants an allowance to the Walloon Region and the French Community Commission. Briefly speaking, the recourses relative to the transferred matters, can be considered to have been transferred concurrently. However, this parallelism seems to be imperfect. In this context, we have underlined earlier that one of the principal objectives of the adoption of Art. 138 of the Constitution was to bring about a structural re-financing of the French Community. It is therefore not surprising to notice that the totality of the resources allocated by the Community to the transferred matters, have not been transferred concomitantly: the difference between the costs and the transferred receipts exactly equals the participation of the Walloon Region and the French Community Commission in the stabilisation of the budget of the French Community. The financial effort this participation requires could however, not only be taken in charge by the sole resources the French Community Commission had at that time. Precisely because these resources mainly came from the French Community, which suffered serious budgetary problems.

Art. 138 of the Constitution and article 58 of the special law on the institutional reforms of 16 July 1993, inserting an article 83quater in the special law of 16 January 1989, resolved this problem by a new source of financing for the Community Commissions: the ‘droit de tirage’ on the budget of the Brussels-Capital Region. This mechanism can be summarised as follows: the Council of the Brussels-Capital Region has the obligation to annually add a special amount to their budget, at least equal to the minimum determined by the special law, on which the French and Flemish Community Commissions can exercise their right of ‘droit de tirage’.

§ 2 of article 83quater foresees among others a mechanism of automatic distribution of the amounts collected between the two communities: each time one of them exercises its rights, the amount paid by the Brussels-Capital Region will be
divided as follows: 80% for the French Community Commission and 20% for the Flemish counterpart. Although this ingenious system permits to partially resolve the financial difficulties of the French Community, there is room for critical observations. More in particular there is a risk of ‘freezing’ when the minimum amount determined by the special law reveals to be insufficient to finance the exercise of certain competencies of the French Community by the French Community Commission. Each increase of the amount of this item in the budget of the Brussels-Capital Region requires indeed a decision by its Council, taken upon request of its government. Since this executive power is equally composed of French-speaking and Dutch-speaking members, it appears that they will, in this case, exercise an indirect but determining influence on the re-financing of the French Community.

This is certainly not the least of the paradoxes resulting from the institutional reform of 1993.

3. The structural imbalance of the public finances of Brussels

In the light of the objective elements explained earlier, we will further examine the viability of today’s financial system of the Brussels-Capital Region. However, our purpose will neither be to make a macro-economic analysis of the regional balance, nor to make an exhaustive report about all the critical elements of the regime which is established by the special law of 16 January 1989: it seems that what we are learning from it would indeed be difficult to generalise and therefore little compatible with the objective of the present study. We will rather develop a reflection about the structural problems of the adopted method of financing, and we will be able to note on the contrary that they are susceptible of being used, mutatis mutandis, in any large urban community.

When making an analysis of the budgetary balance of Brussels, one remark must be made before all others: the allocated part of the taxes on physical persons represents, year in, year out, a little more than half of the totality of the means at the disposal of the Brussels-Capital Region. This remark is essential because it is sufficient to demonstrate in how much the budgetary balance of Brussels is depending on this particular resource. No doubt, a priori, there is nothing very alarming. A more careful examination of this situation, however, indicates that it profoundly weakens the finances of the Brussels-Capital Region, in as much as some people today question its long term viability. Why? Because, on the one hand, the quota of the Brussels-Capital Region in the total of taxes on physical persons is a ‘decreasing constant’, and, on the other hand, the attribution of IPP is intrinsically a method of financing which is unfavourable for Brussels. Hereinafter we will analyse this twofold limitation.

3.1. The problem of the unfavourable evolution of the establishment of the IPP

The IPP (tax on physical persons) collected in the territory of the Brussels-Capital Region represented only 9.79% of the total national amount in 1995, whereas
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it was 10.85% in 1989. One can easily imagine the importance of the resulting shortage for the public finances of this Region. This unfavourable evolution seems to have a double cause: the decrease of the population (3.1.1.) and the collapse of the fiscal capacity (3.1.2.) of this population.

3.1.1. Decrease of the population

If we compare the Flemish, the Walloon and the Brussels situations, on 1 January 1988 and 1995, we notice that the populations of the two large Regions of the country increased during this period from 5,696,051 to 5,866,106 inhabitants for Flanders, and from 3,209,319 to 3,312,888 inhabitants for Wallonia. The Brussels situation, however, goes in the opposite direction. The figures are clear: since about 10 years Brussels knows the phenomenon of emigration, a decrease in the number of inhabitants, which implicates an inexorable collapse of the resources which it receives from its allocated part of the IPP.

3.1.2. The collapse of the fiscal capacity

The comparison of the respective regional evolution of the average declared income is rather gloomy as well. Since 1992, the average income in the Brussels-Capital Region is inferior to its equivalent in Flanders, and the gap with Wallonia, although still positive, is diminishing constantly. In other words, Brussels is knowing a relative impoverishment, a decrease in its fiscal capacity, which weighs heavily on the resources it gets from its allocated part of the IPP.

This twofold evolution of emigration and impoverishment must not solely be seen as a simple phenomenon of an economic crisis. It is on the contrary partly the result of the intrinsic and structural unsuitability of the system which allocates part of the IPP to the financing of a Region, as cramped and centralised as Brussels-Capital. We will further illustrate this below.

3.2. The structural unsuitability of a system attributing part of the IPP

We have explained earlier that Article 7 of the special law of 16 January 1989 stipulates that the ‘taxes on physical persons is (considered) located, based upon the place of residence of the taxpayer’. This general provision is the source of very important budgetary difficulties for the Brussels-Capital Region. It implies that the Region can only profit from an attributed part, calculated on the IPP paid by the ‘fiscal’ inhabitants, while they only represent more or less half of the population that uses the regional public services. In other words, Brussels is, like most of the big cities, fallen victim to an ‘effect of dissipation’ (‘spill-over effect’), a term used by economists to describe a situation where the benefits of an offer of public assets to a community, extend also to the neighbouring communities. Of course, Article 64 of the special law of 16 January 1989 foresees that a special allowance is given to the City of Brussels in order to compensate for the extra charges it incurs as a Capital. However, it is generally admitted that this allowance is insufficient (other
municipalities of the agglomeration incur expenses generated by their status of first city of the country without receiving any compensation). The expenses directly linked to the function of ‘Capital’ are directly imputed on the federal budget. This does not really intend to re-finance the regional competencies which themselves generate the effect of dissipation (e.g. public transportation). In the end, it is obvious that there is apparently no mechanism in the Belgian budgetary law that takes this dissipation into consideration.

It needs to be stressed, also, that the obligation for the inhabitants of Brussels to finance themselves the services beneficiary to a public twice as large, is undeniably an encouragement to emigrate to the municipalities of the outskirts. This demonstrates that the above explained evolution concerning the decrease of resources from the allocated part of the IPP, cannot only be reduced to a simple economic crisis, but that it is indeed a structural weakness of the system installed in 1989.

Conclusion

In the light of the above mentioned developments, it seems undeniable that the methods of financing which are at the disposal of the Regions today, are inadequate for the specific problems of the Brussels-Capital Region. We can also add here that the re-financing of the French Community, which has to be partially supported by the central Region by means of the ‘droit de tirage’ by the Community Commission, renders the task of the leaders even more delicate. A reform of the actual system seems therefore advisable, if not necessary. In what sense? The German and Swiss federal systems seem to be interesting: Germany has a mechanism of fictitious increase of the population of the Cities-Länder that tries to compensate for their specific charges; whereas Switzerland generalises the transfers of financial compensations between the federal entities.

Better still, the analysis of the public finances of certain centralised States can also be regarded as particularly instructive: for example, the expenses for the police forces in cities like Paris and Stockholm are mainly financed by the State; in Brussels however they rely exclusively upon communal budgets. Beyond their respective particularities, these examples show, in my opinion, the need to consider the existence of dissipating effects in the financial mechanisms specific for public finances of large urban entities. Since it has not enough taken into consideration the characteristics of the Brussels Region, the system installed by the special law of 16 January 1989 seems out of balance, and even not viable.

Notes

1 For the sake of completeness, we would like to specify that the expenditures mentioned in Art. 13 to 21 of the law on financing, are divided into current expenditures and capital expenditures and that the latter are entirely (and not only up to 14.3%) used in the capacity of loans of the Regions and that
they are later re-imbursed by the Federal State up to 85.7%: in this very particular case, the Regions are self-financing 14.3% (and not 2.04%) of the expenditures in question through their capacity of loans.

2 The judicial status of this tax is slightly different, to the extent that the reforms of 1993 made it a communal tax. This modification however has no practical consequences because only the federal authority has the competence to fix the regime of this tax (rate, establishment, etc.)
CO-OPERATION IN THE FEDERAL STATE OF BELGIUM

Jacqueline De Mol (ULB)

Introduction

The Belgian process of federalisation which Belgium has known, has made it necessary to set up mechanisms aimed at bringing together the State, the Communities and the regions for the exercise of their respective authorities. Indeed, in a federal state, such mechanisms are the counter-balance of the recognition of the autonomy of the federate entities and are recognised as essential to maintain the federal balance. Among these mechanisms, some have as an objective to ‘associate public persons accepting to work, on equal terms, at the execution of a common objective.’ These mechanisms belong strictly to the so-called area of co-operation. Others, which we will call mechanisms of collaboration, only organise ‘the intervention of a public person in the activity of another public person, this intervention not being based upon any equality between the public persons concerned.’

This presentation will first of all look into the mechanisms of collaboration. Even if they are not, strictly speaking, instruments of co-operation in the sense defined above, their study presents, however, an interest in the framework of the present studies as far as they institutionalise contacts between political bodies. Secondly we will study the instruments of co-operation existing in the Belgian State to finally, in a third part, determine the role they are playing in the federal State of Belgium.

1. The mechanisms of collaboration

In some fields, the institutional reforms in 1980 and 1988 have installed various co-ordination mechanisms in the national, regional and Community politics whose main objective is to prevent conflicts which could arise from the incoherence existing between the norms adopted by the different entities.

These mechanisms more than often imply the federal authorities on the one hand and the Communities and/or regions on the other. They co-operate chiefly with respect to the following issues: unemployment, national plans concerning electricity supply, environmental protection, water supply, communication and transport, technical security, norms for the construction and maintenance of roads, harbours, airports and certain aspects of economical politics.

These various mechanisms imply very different degrees of collaboration. Some - ‘information’, ‘communications’, notifications’ - are only measures of publicity subsequent to the act, to avoid a too tight partitioning between the institutions.

Others impose to make contacts or advice or to set up a dialogue or association, and even to take into account opinions expressed by another entity,
leaving the responsibility of the final decision to only one authority or consent. Others, agreements or consent, establish real joint decisions requiring the agreement of all the authorities concerned in order to be adopted.

As these procedures play an essential role in keeping a minimum of cohesion in a federal state; not respecting them opens the way to recourse. There are two types of recourses. If one of the procedures is violated, the Prime minister or the President of the regional or Community government is given the possibility to refer the matter to the co-ordination Committee (art. 33 of the law of 9 August 1980) which is composed half of representatives of the federal government and half of representatives of the various Community and regional governments.

When a matter is referred to the co-ordination Committee, the implementation of the contentious decision is suspended until the Committee establishes, following the consensus procedure, that the prescribed rules of procedure have been observed. The suspension may not exceed 120 days. This detour through the co-ordination Committee looks like an attempt of political conciliation, leaving intact the future jurisdictional recourses.

If the administrative authorities concerned do not respect these mechanisms, a recourse for annulment before the State Council may also be introduced. Moreover, the Arbitration Court may be requested to cancel a legislative norm which would fail to respect them.

Up to now, rather few recourses for annulment succeeded in breaking the collaboration procedures. Considering the lack of precise legal definition of these procedures, the limited number of annulments seems even less significant. This observation shows the positive attitude of the political bodies towards these procedures. The reason for respecting these procedures might be caused by cautious consideration of the existing sanctions. This respect is encouraged by the preventive role played by the legislative section of the State Council in this matter. It has happened indeed, that this section in its previous judgements reports to the authority concerned the need to respect a measure of collaboration.

These considerations must not make us overestimate the role played by the above procedures, in terms of co-operation. These are limited indeed, as previously said, to a minimal function of co-ordination between the various political bodies in the Belgian federal State.

2. The co-operation agreements

2.1. The compulsory co-operation agreements

Article 92 bis of the special law of 8 August 1980 has imposed the settlement of 'co-operation agreements' in a series of limitedly listed matters. The matters submitted to the settlement of compulsory co-operation agreements generally concern fields which, by nature or by function, do not fall under the exclusive re-attachment to a public body.
This way, settlement of agreements has been imposed between the federal State and the Region in the field of telecommunication and between the federal State and all the federal entities, in matters of foreign relations. The compulsory co-operation is not only vertical: the three Regions also have to co-operate to implement policies concerning certain aspects of water, transportation and public works (such as harbours, roads, canals extending beyond the regional borders). For your information, the agreement with regard to the Belgian School of Navigation must be settled between the Communities.

The disputes originating from the interpretation or the implementation of these agreements are judged by a co-operation jurisdiction. Each agreement corresponds with a specific jurisdiction created by the contracting parties themselves. Its composition, procedure and competence are regulated by the special law of 8 August 1980.

As they are compulsory, can we still reasonably consider that these agreements are a matter of co-operation? Don’t they conceal even more the joint exercise of competence distributed between the various federate entities? These questions go deeper into the limits of federalisation in matters for which the settlement of co-operation agreements is imposed.

The process of federalisation has been started in order to stop the regional-communal conflict between the regions and the Communities. If this solution appeared to be the most efficient, it was at the same time the most radical. To extend it to matters presently submitted to compulsory co-operation agreements would have been a step towards a confederal logic which the mentalities were not ready to get over. On the other hand, to submit these matters to a joint exercise of competence would have been felt as putting a brake on federalisation. Under these circumstances, it was psychologically more convenient to talk about co-operation...

2.2. The optional co-operation agreements

Parallel to the compulsory co-operation agreements, the State, the Communities and the regions have the ability to settle agreements ‘which may deal in particular with the joint creation and management of common services and institutions having their own competence or with the development of initiatives taken in common’ (art. 92 bis of the special law of 8 August 1980).

These optional co-operation agreements allow, the development of a real co-operation between the political collectives. They are also the best tool to measure the degree of maturity reached by the federate entities. The number of settlements of such agreements, the political authorities and the matters concerned are indeed factors which may show whether the autonomous entities composing Belgium are able to see themselves as partners guided by a logic of federal loyalty rather than as simply compelled negotiators or even as competitors.

The review of the optional agreements settled up to now leads to a threefold conclusion. Firstly the list of the matters favoured by these agreements shows that mainly matters are concerned where the distribution of legal authorities is strongly
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divided between the different entities (for example employment and education, scientific research, environment). The elective agreements appear to be appropriate to face the difficulties encountered in practice to make use of these legal authorities. Secondly, a large proportion of these agreements appeals to the federal authority. This could be interpreted as the consequence of the first point: if the strongly subdivided matters are particularly privileged by the optional co-operation agreements, it is logical that the federal authority will be often involved. It is also possible that the federal authority plays a promoting role as, ‘having no Community identity’ it is naturally more prone to or at least more qualified to give an impulse to the co-operation in the Belgian State. Finally, besides the presence of the federal authority, there seems to be little contact, at least through the settlement of co-operation agreements, between the French-speaking and the Flemish-speaking entities. Three elective agreements can be quoted between the three Communities: one deals with the alcohol- and drug-policy, the second with the practice of sports, and the third deals with matters concerning the film Commission. There seems to be however, a closer contact between the Walloon region on the one hand and the Region of the Brussels-Capital or the French Community Commission on the other.

This can easily be explained by the present evolution of the Belgian institutional structures. Indeed, the idea of federalisation of the country originates from the fight of the Flemish people to reach linguistic and cultural autonomy. In reaction to this will for linguistic and cultural autonomy, a Walloon regional consciousness nourished the will to manage their own economical interests.

Nowadays however, the former cultural and linguistic contradiction between the Communities is taken up again. On the one hand, the Flemish Community has absorbed all the Flemish institutions while a francophone interest group originated from the transfer of authorities by the French Community to the Walloon Region and the COCOF. The transfer of legal authorities has generated frequent contacts between the Walloon Region and the COCOF. As the COCOF owes its existence to the Brussels Capital Region, these contacts have brought about an approach between the Walloon Region and the Brussels-Capital Region. This movement has been reinforced by the tendency of the Flemish Movement to refuse to recognise the Brussels-Capital Region as a complete Region.

3. The inter-ministerial conferences

The co-ordination committee has been given the right to set up specialised committees called ‘inter-ministerial conferences’, composed of members of the federal, regional and Community governments in order to promote the co-ordination and the co-operation between the States, the Communities and the Regions (art. 31bis of the law of 8 August 1980). Several inter-ministerial conferences have been created on matters as different as infrastructure and communications, scientific policy, finances and budgets, public function, employment and labour, agriculture, environment, immigration policy and audio-visual. The creation of an inter-ministerial conference on foreign policy has been made compulsory. The co-existence
of distinct and equal judicial orders, the high level of autonomy granted to the federate entities as far as international relations are concerned indeed justify a permanent co-ordination between the different levels of power to assure coherence in the foreign policy.

Being a place where people meet, discuss, exchange information, the inter-ministerial conferences play undeniably a crucial role in the field of co-operation. This is indeed the place where co-operation agreements can best be suggested, negotiated and even concluded.

Practice shows that the inter-ministerial conferences have become the best place to attenuate, and even to resolve conflicts between Community and region. It is true that because they are composed of the three powers, the federal authority may play the role of arbitrator and have compromise solutions adopted which are built most often on the give and take rule.

Also, the inter-ministerial conferences have awakened a 'conscience of federate entity' in as far as they have found a place where to negotiate with the federal authority, and where a solidarity between federate entities may develop in order to allow the outcome of their demands.

Conclusion

From the above, what are the conclusions on the role of the co-operation mechanisms set up in the federal State of Belgium? The optional co-operation mechanisms being flexible, their content will depend to a large degree on the personality of the political officials concerned. Thus, there is a risk that they will be diverted from their primary function of co-operation. Indeed, the inter-ministerial conferences are likely to be used one time to solve political conflicts, another time federate entities might assert their autonomy. They also risk to be regarded upon as instruments designed to solve the inconveniences that resulted from too fragmentary a federalism, while the optional co-operation agreements might only develop between French-speaking entities.

As far as the compulsory co-operation agreements are concerned, we have described above their psychological function in the Belgian political context. Beyond the official terminology, we cannot deny that they conceal in fact a joint exercise of competence.

From these observations, it is necessary to wonder whether the reality which we have just described is compatible with the concept of co-operation defined at the beginning of this report. We then have to admit that the mechanisms set up are, by far, not always used to reach a common objective through the association of public individuals accepting to work on equal terms.

This is not surprising. Could things be different when considering that the co-operation mechanisms studied, are part of an institutional system that is marked by a logic of dislocation characterised by a constantly re-asserted will to increase the autonomy of the federate entities?
Notes

2 Depré, S. 1993: 85.
THE PROTECTION OF LINGUISTIC MINORITIES
IN BRUSSELS AND ITS OUTSKIRTS

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Introduction

The purpose of this study is not to provide an exhaustive report but rather to outline an analysis of some effects of Belgian federalism on the protection of minorities living in Brussels and its outskirts. It will evaluate these effects in the light of the special convention on the protection of national minorities, the only existing legal instrument which goes beyond the classical approach. This Convention does not consider the protection of the minorities as a problem of individual rights whose benefits must be insured without any discrimination. It approaches this problem in a direct way, disengaging the legal principles which the States committed themselves to respect in order to assure the protection of national minorities. Only members of a minority community have rights. Therefore, the Convention deals with the rights of the members of minorities rather than the rights of the minorities as such.

If we tackle the problem of Jerusalem from the point of view of the minorities, we risk to evade fundamental questions, such as the legitimacy of the presence of the Palestinians in Jerusalem, the rights claimed by the Palestinian authority on the East side of the City and the unlawful political occupation of the city by Israel. International law gives us clear-cut answers to these questions. These answers would impose radical solutions which the Israeli partner, who is in a strong position today, is not ready to accept. This is why any global solution will probably accrue from a negotiated political solution, which might take some liberties with regard to international law.

Concessions will be required from both parties in order to find an original solution which will respond to the claims and concerns of both sides. Among these concerns, the problem of the Palestinian minority in Jerusalem and the Jewish establishments in and around East Jerusalem is very acute. In this case, and only in this case, an analysis of the problem of the minorities in Brussels and its outskirts might be of some interest.

There are substantial differences between the Brussels and the Jerusalem situations. Unlike Jerusalem, Brussels is the Capital city of a State which used to be unitary and where French- and Dutch-speaking people lived together. The legitimacy of their respective presence on the Belgian territory has never been questioned.

Beyond this fundamental difference, similar steps were taken by the Palestinians and the Flemish claims in the early sixties. The Palestinians, oppressed by more than 30 years of occupation, claimed the recognition of the border of 1967. Only this frontier could give them a guarantee against Israeli expansion and domination.
Like them, the Flemish, who were culturally, economically and socially dominated by the French speaking people until half this century, requested the definition of a linguistic border in order to stop the progressive 'francisation' of its population. This border would lead to the compulsory use of Dutch within the Flemish territory. Subsequently the French unilingual territory is separated from the Flemish unilingual territory.

Because of this similarity, it is of interest to evaluate the consequences of the territorial claims on the protection of the Belgian minorities. In contrast, it will be interesting to discover an alternative to the principle of territoriality that gives a generous place to the minorities: the Brussels model.

We need first to identify the relations minority/majority in Belgium. We will describe briefly the problem of the minorities within its historical and institutional context. Meanwhile we will also have to understand the relations of power which preceded the elaboration of the mechanisms for the protection of the minorities, treated under 1.

Subsequently, we will focus on specific mechanisms such as the division of power, dealt with under 2 and the institutional mechanisms allowing the minority group to have its own institutions for its own cultural development, under 3. Finally, we will evaluate briefly the linguistic rights of the minorities under 4.

1. The institutional context

Belgium is a federal state. It is composed of a Flemish majority of a little less than 6 million individuals living mainly in the North, and an important French-speaking minority of approximately 4 million people living mainly in the South and in Brussels.1

The federalisation of the Belgian State was accompanied by the emergence of new minorities to be identified within their institutional and political context. The federalisation of the State is the result of the action of two political movements which followed each other: the Flemish Movement and the Walloon movement. The first established the Communities and the second the Regions of the State.

1.1. The creation of the Communities

1.1.1. The Flemish Movement

The Flemish Movement, searching for cultural emancipation since the end of the last century, obtained, in 1970, the creation of two federal entities2 which embody its request for autonomy from the French-speaking people: the Flemish Community and the French Community.

Today, these communities can take actions by means of decrees, acts equivalent to 'law', in cultural and educational matters, as well as the area of social aid and public health. They are thus allowed to promote and insure the survival of their culture.
Each Community is competent in its unilingual French or Dutch language region. Each is also competent in the bi-lingual Region of Brussels-Capital. On the one hand, the Communities have a territorial foundation where they exercise their competencies in an exclusive way and, on the other hand, a non-territorial foundation where each of them is competent in an autonomous way.

1.1.2. The principle of the territoriality and the French-speaking minority of the outskirts

1.1.2.1. The linguistic border

The attachment of the Flemish people to a territory is the consequence of a progressive ‘francisation’ of the Flemish population during the first half of the century. As a reaction to this ‘threat’, it was decided during the sixties to draw a linguistic border between the unilingual region of the French language, the unilingual region of the Dutch language and the bi-lingual region of Brussels-Capital. Although this law did not yet result in the federalisation of the State, each Region had a distinct linguistic regime, allowing Flanders to thwart the ‘francisation’ of its population by the adoption of linguistic laws enforcing the exclusive use of the Dutch language in numerous public areas (administration, education, justice, ...).

The creation of the linguistic border resulted in a cultural identity which coincided with a well-defined geographical area. This territorialisation of the Flemish cultural identity eventually led Flanders to claim the institution of Communities in the State.

The federalisation of the State in Communities relies, logically, on the territories limited by the linguistic border. From now on cultural identity corresponds to a territory and a political institution.

1.1.2.2. The communes with facilities

The creation of the linguistic border in 1963 and the subsequent re-attachment, in 1970, of all communes to a linguistic region generated French-speaking and Dutch-speaking minorities within the two unilingual territories. These minorities are essentially located along the linguistic border and around Brussels, where more than 120,000 French-speaking people live under the rule of Flanders.

Since the creation of the linguistic border in 1963, inhabitants of some communes with substantial minorities, more particularly the six communes living on the outskirts of Brussels, benefit from some facilities concerning the use of the French language for administrative matters. These, so-called ‘communes with facilities’, a French-speaking majority which found it difficult to accept a strict regime using only the Dutch language. It is worth mentioning that other communes on the outskirts, with substantial French-speaking minorities, do not have such facilities.

This regime of facilities has now been recognised by the Constitution which submits any modification of this regime to a special law. Changes in the law require a majority within each linguistic group of the two federal chambers and an overall two third majority of the expressed votes.
1.1.2.3. The bilingual Brussels-Capital Region: the absence of a territorial foundation

Both communities are competent in the bi-lingual region of Brussels-Capital. They do not have a territorial foundation. The communities are only competent with regard to the institutions established on their territory and which must be considered, because of their activity or organisation, as belonging exclusively to either of these communities. Besides, they have the ability to delegate, even to transfer, some of their competency to community bodies which are exclusively from Brussels: the French and Flemish Community Commissions. The small Flemish minority that lives there, depends for community matters on the Flemish Community and the Flemish Community Commission. The French-speaking people depend on the French Community and the French Community Commission.

The jurisdiction of the two Communities over Brussels has never been challenged seriously. Although Brussels is enclosed in the Flemish territory, two factors have prevented the annexation of Brussels to Flanders. The Belgian State which was united before, has its Capital there. Besides, Brussels is for a great majority French-speaking. It was therefore totally unthinkable for the French speaking side to endorse whatever Flemish claim to annex Brussels.

1.2. The creation of the Regions

The Walloon movement, fighting for the control of its staggering economy in the sixties, obtained in the regionalisation of the State in three distinct federal entities: the Flemish Region, the Walloon Region and the Region of Brussels-Capital.

These three Regions are competent in matters such as economy, urbanisation and environment in respectively the unilingual Region of the Dutch language, the unilingual Region of the French language and the bi-lingual Region of Brussels-Capital. The existence of the Regions was established in writing as of 1970. However, the Walloon and Flemish Regions were set up only in 1980 whereas the Brussels Region had to wait for an additional 9 years. The reason for this latter delay is simple. The Flemish people only represent about 15% of the Brussels population. The Flemish did not favour the emergence of a third institutional centre, with a French-speaking majority. It might bring the Flemish in a minority position as far as the institutions are concerned, in a country where they have the majority: two French-speaking Regions against one Flemish Region.

In other, more symbolic, respects, Brussels enclosed in Flanders and Capital of both Flanders and Belgium, could not fall into the hands of French-speaking people.

The Flemish unwillingness vis-à-vis the creation of the Brussels Region explains why several mechanisms were installed to insure the division of power between French and Dutch-speaking people (even though the latter represented only 15% of the Brussels population), when the Region was established in 1989. This division of power was justified by the Flemish who estimated that it was the exact and necessary compensation for the division of power at the federal level: if this division would be questioned, the other one would be also.
2. The mechanisms of the division of power

The main Convention relating to the protection of the national minorities remains rather enigmatic about the measures to be taken to insure the effective participation of the minorities in public affairs. At most, Article 15 declares the engagement of the parties to create the necessary conditions for such a participation, both at the local and the national level.\textsuperscript{10}

The different mechanisms dividing the power go extremely far at the level of the Region of Brussels-Capital (2.1.), but are almost non-existent at the level of the Brussels communes. We will report on this by comparing perspectives of the communes on the outskirts with or without linguistic facilities (2.2).

2.1. The regional level

Original mechanisms to divide the power have been elaborated on governmental level and at the level of Council of the Region Brussels-Capital level. The description which follows is generally applied for the Brussels agglomeration; its Council and the Constituency are identically composed of the same bodies; the same goes for the Joint Commission for Community Matters.

2.1.1. The Council

The mechanisms protecting the Flemish minority are first of all, based on the division of the Council into two distinct linguistic groups (2.1.1.1.). If this is not taken into consideration, the mechanisms become inoperative.

Within the Council, the protection of the Flemish minority is insured at two levels. The presence of the linguistic group who is in the minority is ascertained during the legislative procedure (2.1.1.2.). Besides, specific rules relative to the decision making procedure insure an effective protection of the minority (2.1.1.3.).

2.1.1.1. The linguistic groups

The division of power between the French-speaking and the Dutch-speaking in the Council and the government rest on the identification of two linguistic groups. It was therefore necessary to avoid any challenge of existence of these groups.

This is why the law forbids bi-lingual lists and requires the identification of the linguistic background of the candidates. The objective is to avoid that French speaking people, pretending to be Flemish, and vice versa, try to weaken the representation of the linguistic group they pretend to belong to.\textsuperscript{11}

The electoral system foresees that each linguistic group verifies the power of its members and rules about eventual disputes.\textsuperscript{12} In this way, the linguistic group that has the majority cannot impose a member to the minority group just by verifying the eligibility conditions or the authenticity of the linguistic group the elected member claims to be part of.
2.1.1.2. The representation of the minority group throughout the legislative process

The two linguistic groups are represented in the Council on a strictly proportional basis.12 No minimum representation is reserved for the minority group in the Council. Actually, only 11 seats out of 75 belong to the Dutch-speaking group. However, a specific representation of each linguistic group is assured throughout the legislative process.14

2.1.1.3. Procedures

2.1.1.3.1. The procedure of the ‘alarm bell’

This procedure15 allows each linguistic group to suspend, by a motivated motion signed by 3/4 of the members, the legislative procedure for each proposal or statute that might seriously damage the relations between the Communities. In that case, the motion is returned to the government that will give a motivated opinion and, if necessary, will amend the project or the proposition within 30 days. The Council will then proceed with the vote of the amendments proposed by the government and, eventually vote for or against the whole project or proposition.

This procedure has never been used. This can be explained by the fact that the main part of the legislative activity finds its origin in the projects for statutes, which presupposes the agreement, at least tacit, of the minority represented in the government and also by the dissuasive nature of this mechanism.

In case of a disagreement with the Dutch-speaking members of the government, the French-speaking majority knows it will not be possible to circumvent this disagreement by the simple tabling of a proposition for a statute.

2.1.1.3.2. A special procedure with a double majority

Certain actions of the Council do not only require the absolute majority of the members of the Council, but also the absolute majority in each linguistic group. This procedure is used in the relations between the Council and the Government. The same goes for the election of the members of the Government by the Council when they are presented on the same list16 and for the adoption of a vote of no-confidence against the Government.17

Ever since the installation of the Government, this procedure has ensured the support of the two linguistic groups for the Government. Besides, it avoids that a motion of non-confidence is directed against the whole Government without the approval of the majority in each of the two linguistic groups.

The special procedure of the double majority is also applicable for the adoption of ordinances of the Joint Commission for Community Matters. This Commission, essentially made up by the same members as those of the Brussels-Capital Region, has to handle the difficult community matters which cannot be handled separately by the two Communities.18
2.1.2. The government

The division of power in the government is insured at four levels: the composition of the government (2.1.2.1.), the division of the responsibilities in the government (2.1.2.2.), the method of decision-making (2.1.2.3.), and finally, the special mechanism of liability to the Council (2.1.2.4.).

2.1.2.1. Composition with parity representation

The government of the Region consists of 5 members elected by the Council. Besides the President, the government has 2 French-speaking and two Dutch-speaking members. It has been common practice that the President always belongs to the French linguistic group who has the majority. The minority group is therefore certain to formally obtain a parity representation in the government.20

The special law not only stipulates the formal representation, it also indicates that the ministers of the minority group should have the political support of the majority of this minority group.21 It must be avoided that the linguistic majority imposes the choice of its government representatives on the Flemish minority, with the risk to damage the split up of power.

2.1.2.2. A well balanced distribution of the responsibilities

The government distributes the tasks with a view to prepare and execute its decisions. When there is no consensus, the competencies of the government are divided according to 5 groups of items which are defined by the special law. First, the president chooses one of these groups. The members of the largest linguistic group have the second and fourth choice, and the minority linguistic group gets the third and fifth choice.

Until now, this forced split up of the responsibilities was only used in case of the distribution of the tasks relative to the competence of the Joint Commission for Community Matters.23

Instead using this system, it seems that when no agreement has been reached with regard to the distribution of a particular task, the government has tended to distribute the disputed task or tasks between two ministers from two different linguistic groups.24 However, for matters which are jointly handled by several ministers, the co-ordination is already established at the moment of the elaboration of the proposals in order to finalise them together.25 In this way, a full and complete collaboration between the two linguistic groups is necessary for any initiative in this field. In any event, the threat of a forced distribution of the tasks allows the minority to negotiate a balanced division of the responsibilities.
2.1.2.3. The collegial structure and the consensus

The government deliberates according to a collegial structure and the procedure of the agreement.

2.1.2.3.1. The collegial structure

Without prejudice of the delegations given to its members, the government deliberates according to a collegial structure. ‘A decision will only be made by the complete government.’ Today, the delegations of authority to the ministers concern mostly secondary matters: daily administrative matters rather than real political decisions.

2.1.2.3.2. The consensus

The consensus is a negotiated method of decision making half way between the absolute majority and unanimity. The ministers who are not entirely in agreement with the decision must bow or resign.

‘The decisions are formulated after a debate, that tries to reconcile the different points of view and to secure a dominant position.’ The rule of the consensus permits ‘to take into account the wishes expressed by a majority, provided that they do not offend too much one or more of the current minorities.’ In this way the minorities are reassured that any decision taken must at least have their tacit approval.

Nevertheless, in a system where the community conflicts are polarised, the rule of the consensus has more in common with the rule of unanimity than with the rule of the absolute majority.

As yet, the Flemish minority in the government has not taken unfair advantage of the strong position resulting from the rule of the consensus. Not a single dispute has taken such proportions that the minority has preferred a decisional dead-lock, to the surrender of one of its claims.

2.1.2.4. The political responsibility towards the Council

An original system of constructive motion of distrust has been set up by the special law. At any moment, the Council may table a motion of distrust against the government or one of its members.

If it is directed against the government, the motion must be supported by a majority in each linguistic group. It is therefore out of the question that the linguistic group who has the majority makes the government fall as a result of, for example, the concessions given to the minority in the government.

If the motion is directed against a member of the government, with the exception of the President, it must be adopted by the majority of the linguistic group to which the member belongs. This insures the independence of the ministers of the minority linguistic group with regard to the pressure of the majority party. They are
not always at the mercy of a motion adopted by the linguistic group that has the
majority.

They are only responsible with regard to their elected representatives. However,
they have to respect the rules of the consensus. From a political point of view, this
system is not free from all critique. A minister, belonging to a minority group, could
make provocative political declarations with regard to the majority group, without
ever being politically penalised by the latter. However, this critique only concerns the
political rhetoric. Indeed, from a legal point of view these deviations are not easy to
understand. A minister could not adopt a decision or a controversial decree, without
submitting it first to the government as a whole. It is then the responsibility of the
President who could be questioned because he has consented to adopt this decree.

2.2. On local level

2.2.1. The 19 communes of Brussels

2.2.1.1. The Communal Council

The minimum representation of the minority is not secured at the municipal
level. Only two communes out of 19 have a Dutch-speaking counsellor.35 If the
communal Council does not have a member from one of the two linguistic groups, the
best ranked member of the Council in charge of social aid belonging to the linguistic
group that is not represented, may then examine all the acts and documents
cconcerning the municipal administration and this under exactly the same conditions as
the counsellors.36

2.2.1.2. The college of the mayor and the municipal representatives

If none of the elected municipal representatives belongs to the Dutch language
group, the municipal Council may decide to proceed with the election of an additional
representative, up to the maximum foreseen by the law, in order to add a
representative to the college who belongs to the Dutch group.37 Today, only four
municipal Councils out of 11 concerned by this hypothesis, did not take advantage of
this possibility.38

2.2.1.3. Critiques from the Dutch-speaking group

Although Brussels is a bilingual Region, the Flemish people of Brussels do not
have any political influence at the municipal level. The communes exercise important
competencies directly involving the citizens; for example, in regional matters
(urbanisation, environment, ...) and community matters (the struggle against poverty,
arts and cultural matters, integration of the immigrants, ...). It is therefore not logical
to exclude the Flemish people of Brussels. Moreover, the Flemish community has no
competence to prescribe rules concerning community matters to the communes of
Brussels.39 The communes of Brussels can completely ignore the Flemish presence on
their territory in their political actions.
This is why some Flemings of Brussels demand a minimum representation in the Councils and municipal colleges, as well as the creation of community commissions at a communal level.\textsuperscript{46} The latter would assume the responsibility for the community allocations which are of the responsibility of the communes.

It is only a question of introducing the community logic at communal level in order to allow for the Flemings, scattered over the different communes, to take full advantage of the socio-cultural benefits offered by a commune.

Actually, it has to be recognised that on local level an important part of the Flemish social and cultural life depends more on the Flemish 'society' life and the 'cultural organisations' of the Flemish community than on the communes.\textsuperscript{41}

Realising that such a system is hard to justify in communes where the Flemings only represent a few hundred constituents, the same Flemish demand the transfer of certain matters of the regional type to the Region and propose a merger of the communes.\textsuperscript{42} This last proposition would allow to increase the Flemish presence in the Councils of the communes, while providing for a rational new division of the territories.

These critiques result from the principle that Brussels is a bilingual city. On the Flemish side, the fact that the Region is bilingual demonstrates the recognition of the presence of a minority, which should be translated by a division of the power on communal level. However, from a strictly legal point of view, the fact that the Region is bilingual does not imply a division of power, neither at the regional, nor at the communal level.

Being bilingual only means that the Flemish should be treated in exactly the same way as the French in as far as administrative matters, education and social relations in the enterprises are concerned.\textsuperscript{43}

2.1.2. The six communes on the outskirts with facilities

The six communes with facilities are located in Flemish Brabant. In most of these communes with a special statute, the French-speaking are in the majority,\textsuperscript{44} so that one may wonder if the mechanisms to divide power in the communes are not similar to the mechanisms that protect the Flemish of Flanders in as far as communal matters are concerned.

2.1.2.1. The communal council

Just like the 19 communes, no minimum representation of the linguistic minority is secured. On the Flemish side, this is even easier to understand because the facility regime conceded to the communes on the outskirts is considered, by a large majority, as an exceptional transitional regime for those who only speak one language, and which in the end, will allow the assimilation of this linguistic minority.\textsuperscript{45}

2.1.2.1. The college of the mayor and the municipal magistrates

The magistrates of the communes are directly elected by the population and not by the municipal Council. As a consequence, the college of the mayor and the
magistrates is represented proportionally which secures *ipso facto* the representation of the linguistic minority.\(^{46}\)

The decisions are not taken with an absolute majority but by consensus. However, in contrast with the regional government, in the absence of consensus, the matter is tabled by the mayor and the decision made in the municipal Council.\(^{47}\) This alternative reduces the political value of the magistrates of the minority group, because all opposition from their side can be circumvented by a majority vote in the Council.

The French-speaking majority in four out of six communes with a special regime knows however, that it should not take advantage of this procedure as the authorities under Flemish supervision might cancel the decision regarded as damaging for the general interest.\(^{48}\)

2.1.3. The other communes on the outskirts

In the other Flemish communes on the outskirts, where the French-speaking are in the minority at the communal level,\(^{49}\) no particular system to divide the power is foreseen, neither in the College nor in the Council. Practice learns us that the important French-speaking minorities in the municipal councils of the communes are systematically relegated to the opposition.

2.3. Intermediate Conclusions

At the regional level, the division of power is characterised by the recognition of the political rights of the Flemish minority as such. It allows each linguistic group to control its representation. Each linguistic group verifies solely the powers of its members, elects the members of the government who will represent it and can also remove them. This control is an essential and preliminary measure to effectively divide power.

If the parity is only a rule in the government, each group has an equally important political weight because of the possibility of each of them to block the complete decision making process (collegial structure, consensus, double-majority, alarm bell).

However, this system is extremely fragile. If one linguistic group prefers to block a decision rather than to abandon a claim which is judged unacceptable by the other group, the system fails.

At the communal level, almost no political rights are given to the minority as such. It must however be underlined that, in spite of the small number of Flemish communal counsellors, the major part of the Brussels communes has a representation of the Flemish minority in the College of mayor and municipal magistrates. Besides, the ‘legal’ concept of ‘bilingual’ in the Region only means that the Dutch language should be treated in exactly the same way as the French language, but this does not at all imply a division of power.

The absence of any guarantee at the local level in Brussels might, at first sight, be in contrast with the regime granted to the communes with facilities on the
outskirts. These Flemish communes secure the representation of two communities in the College by a system where the magistrates are elected directly.

However, one should not be mistaken. This system is highly favourable for the Flemish, generally in the minority in the communes with facilities. Moreover, the division of power in these communes with facilities depends solely on the numerical relations between the communities, no minimum representation being given to the French speaking. If, de facto, the French speaking are certain to be represented in the College, de jure, no political right is expressly given to the French speaking people of these communes. That is why the objective of the Flemish government to 'make these communes Flemish' gives rise to great concern.

Moreover, in the other communes on the outskirts, no political right of whatsoever nature is given to the French speaking minority.

Despite their representation, which is substantial in some communal Councils, the French speaking are relegated to the opposition and thus not represented in the College of the mayor and the municipal magistrates.

3. The institutional autonomy of the minority

Let us now study the institutional mechanisms which grant the minority groups their own institutions in view of their cultural development.

In this respect a difference needs to be made between the Brussels Region, where the two communities are equally competent, and the outskirts, where the Flemish Community is solely competent, also to the French speaking minorities 'enclosed' in the territory.

Whatever the differences between these two situations, it must be emphasised that the special Convention does not impose any obligation to create institutions suitable for the minorities.

3.1. The Brussels region

The Flemish and French Communities are both competent in Brussels. They can delegate, or even transfer their competency to Brussels institutions, the French and Flemish community commissions exclusively consist of Dutch or French speaking regional representatives.

Two separate normative orders go side by side. This system offers the great advantage that each community can promote its culture and education in an entirely autonomous way, within the framework of its legal competency.

The Flemish and French communities are, however, competent in the bi-lingual Region of Brussels-Capital only for to institutions established in the Region and which, because of their activity or their organisation, must be considered as belonging exclusively to either of the communities. The inhabitants of Brussels are only indirectly attached to their Community, through public institutions (in the cultural field and education) or through private institutions (in the cultural domain and education, as well as in personal aid and health care).
The communities are not competent for private persons and, thus, cannot directly impose obligation on them. Besides, the communities are not competent for the institutions which, just because of their activity and organisation, are not attached exclusively to either of the two communities, so that no person or private institution is forced to specify its position vis-à-vis a specific community.

From the point of view of the protection of the minorities, this system is extremely original. On the one hand, the Flemish minority may assert itself through its own political institution, and, on the other hand, individuals and private institutions are not obliged to verify the community to which they belong. Hereby, one avoid an artificial politicisation of the relations between minority and majority. An original balance is found between the protection of the culture of the minorities and the preservation of the social cohesion.

3.2 The outskirts of Brussels

The Brussels outskirts are located in the unilingual Flemish region. By virtue of the territorial principle, the Flemish Community exclusively exercises its communal and regional competency. The French speaking people that are living there, depend exclusively on the Flemish Community for these matters.

Besides the problem of the use of languages, which will be discussed in another chapter, the Flemish government has decided to take every conceivable initiative in order to strengthen the Flemish character of the communes on the outskirts, and this in areas such as territorial development, housing, culture and employment.54

The objectives so openly displayed by the Flemish Community, indicate that they are still far away from promoting the conditions that will allow the members of the French speaking minority to preserve and develop their culture, and also to preserve the essential components of their identity, their language, as it is expressly recommended by Article 5.1 of the Convention concerning the protection of national minorities.

More recently, the government of the Flemish Community has adopted a decree which stipulates that ‘the attribution of social housing or parcels of land is addressed in the first place to candidate tenants, candidate ‘emphytéote’ and candidate buyers who have a socio-economical or socio-cultural link with the zones of the Vlabinvest (the six communes with facilities and the communes on the outskirts with a large presence of French speaking people such as Overijse, Hoeilaert and Tervuren).55 Of course, these conditions for the attribution of social housing are not openly based on the linguistic criterion, which would certainly be illegal.56

However, the political context in which this decree was adopted leaves little doubt on the political strategy of the Flemish government: to prevent French speaking newcomers to settle in these communes.58

On this assumption, it is extremely dangerous to submit certain rights to a condition which is as objective as the socio-cultural link. Such a criterion is a breach for the prohibited distinguishing interpretations which are very often difficult to prove legally.
The political manoeuvre intended to ‘make the outskirts Flemish’ is confirmed by the reinforcement of the principle of territoriality. As a result of this principle, the French community cannot directly intervene on the unilingual Flemish territory.

In the framework of its cultural competencies, the French community can take the initiative to promote its culture and to materialise the right for everybody to broaden its culture. By its nature, this cultural promotion might therefore have extra-territorial effects. The territorial demarcation of the competencies of the Community does not prevent however, that each individual has the right to expand its culture, independently from the linguistic region where he lives. The French community indirectly supports French speaking people by subsidising several cultural activities.

The Arbitration Court has given a twofold temperance to this possibility. The Arbitration Court assimilates ‘cultural promotion’ with measures taken to protect the minorities. The subsidising by the French community of French associations located in the communes where the Constitution recognises the existence of minorities for which the law installed protective measures, must by definition of its area of application, *ratione loci*, be assimilated with protective measures for the French speaking minority in these communes.

However, neither the Constitution nor the special law appoint the French community as protector of the French speaking people isolated in the unilingual Flemish region. In that way the subsidising violates the rules which are trying to redress the competencies.

The terms used by the Court are ambiguous. They do not say that it is because of the nature of the subsidies, that they must be assimilated with the measures to protect the minority. Besides, the government of the Flemish community has never contested that the disputed budgetary dispositions ‘favour the cultural expansion of the French speaking inhabitants of the communes with a special linguistic statute’.

The Court confirms that it is because of the area of application, *ratione loci*, of these budgetary arrangements, that they must be assimilated to the measures to protect the minorities. In other words, all the credits used to promote the culture of the French speaking people in the communes with facilities always seem to have been assimilated with the protective measures for the minorities, whatever their nature.

The cultural policy of the French community must from now on either go through a (hypothetical) cultural agreement with the Flemish community, or through the financing of cultural associations located in the French community, without directly using these credits for a cultural policy which is specifically adapted to the needs of the French speaking people of the outskirts.

In as far as the Flemish community refuses to give the necessary means to the French speaking people for their cultural expansion, the limitation of the extra-territorial effects of the cultural promotion might cause community disputes.

These examples illustrate how much the Flemish are on the defensive with regard to the French speaking people and that the fear for a ‘francisation’ of the population is still very much present. However, these Flemish objectives for the ‘flamandisation’ of the outskirts are in essence incompatible with the rights of the French speaking minority as understood by the Convention.
4. The use of languages

'The use of languages currently used in Belgium is free: it can only be regulated by the law and only for matters of public authority and for legal matters'.

This principle of freedom in the use of the languages, written down in Article 30 of the Constitution, lost in substance when three new exceptions were introduced by a new article of the Constitution in 1970.

The new article 129 of the Constitution reserves the possibility to regulate the use of the languages for administrative matters, education in establishments created, subsidised and recognised by the public competencies, and also for social relations in enterprises.

4.1. The Region of Brussels-Capital

The use of the languages in the bilingual Region of Brussels-Capital is a competence of the federal State.

The Flemish minority has exactly the same linguistic rights as those of the French speaking majority. The employers of enterprises must use the language of their employees for acts or documents addressed to them. The administration is also required to handle all the dossiers in the language of the citizen, be it in French or in Dutch. In order to guarantee the execution of this obligation, staff of different linguistic background is used in the administration in order to secure the representation of the Flemish minority.

In order to be employed by the administration, every civil servant must have an elementary or sufficient knowledge of the second language. However, this last obligation has been greatly eluded, mainly as a result of the difficulty to find bilingual French speaking civil servants have been made without taking this into account. In order to escape from this obligation, several hundreds of civil servants are working under an employment contract. The negative perception the Flemish have about Brussels is mainly caused by the inability of the civil servants to use the Dutch language. These wrong applications of the linguistic laws strengthens the Flemish feeling of being culturally dominated by the French speaking people.

Besides the recognition of equal linguistic rights, the State is also obliged to take positive measures in order to give equal rights to the minority. The State must also organise and subsidise primary schools and day nurseries so that the parents can send their children to the establishment that uses the language of their choice.

This projection of the linguistic rights throughout the public sector allows the members of the two communities to be fully recognised in their identity. This system goes beyond the claims of the Convention regarding the protection of the national minorities, because this Convention obliges the States, that signed to enable the use of the minority language between individuals who belong to the minority and those who belong to the administrative authorities.
Better still, the minority is granted a collective right in charge of the State the minority concerning the organisation and financing of its primary schools and day nurseries although this is explicitly excluded by the Convention.\textsuperscript{70}

4.2. The Brussels outskirts

The communities, with the exception of the federal State, organise the use of the languages for matters mentioned in Art. 129 of the Constitution by decrees in respectively the unilingual French language region and the unilingual Dutch language territory, excepting the communes, which have a special linguistic statute. The legislation concerning the use of the languages finds therefore a territorial anchoring. The ‘C.E.D.H.’ was of the opinion that the territorial principle on which the Belgian laws regarding the use of the languages are based, is an objective criterion of general interest. Therefore any deviating treatment based on this, cannot be judged as an unjustified discrimination.\textsuperscript{71} The linguistic rights of the minorities have thus been sacrificed by the European Court in name of the general interest.\textsuperscript{72}

The Court allowed the Communities to adopt a policy of homogenisation in the use of the languages in their respective territories, without taking into consideration the Flemish minorities and the isolated French speaking people in their territory.

Flanders, until then culturally oppressed, has eagerly adopted this extremely strict policy regarding the use of the languages (4.2.1.). Only the communes with facilities escaped from this linguistic policy of homogenisation (4.2.2.). The Flemish authorities tried also to draw directly from the principle of the territoriality in order to impose linguistic obligations (4.2.3.).

4.2.1. The communes on the outskirts where substantial minorities live, but to which no facility regime is given

The administrative services exclusively use the Dutch language in their contacts with private persons. Article 3 of the decree of 30 June 1981 completes this liability, obliging private persons and enterprises to exclusively use the Dutch language in their relations with the local and regional administration: not a single demand formulated in French will be satisfied.

Some people question the compatibility of this obligation with Art. 30 of the Constitution which imposes the principle of freedom in the use of the languages. The possibility to regulate the use of the languages for administrative matters as stated in Art. 129 § 1 -1\textdegree{} of the Constitution does not allow, in principle, to impose linguistic obligations on a private person, even for administrative matters.

This decree illustrates the will to restrict the right of the individuals to use the language of their choice, by the wide interpretation of the intervention area of the decree regarding the use of the languages. In any event, one might wonder what the compatibility is of this legislation with Art. 11.2 of the Convention, which declares that the parties who signed should as far as possible secure the conditions allowing the use of the minority language in relations between people belonging to a minority
and the administrative authorities in the geographical areas where these people are living.

The educational system must be organised in Dutch in order to receive subventions and to be recognised. The education is free in virtue of Art. 24 of the Constitution. Therefore the Flemish community cannot forbid parents to send their children to a school in another linguistic region or to other private schools which are not recognised and get no subventions. The recognition and the subventions are exclusively reserved for the education organised in Dutch. This is against the principle of Art. 14 of the Convention. This article stipulates that, if there is a demand which is sufficiently important in a geographical area with a substantial number of people belonging to a national minority, the parties will, as far as possible in the framework of their educational system, see to it that the minorities are given the possibility to learn the language of the minority or receive their education in this language.

The use of the Dutch language is also prescribed in the social relations between employers and employees, as well as for acts or documents used in the enterprises and which are prescribed by the law. If the Dutch language is not used, they are declared null and void and sanctions can be taken.\textsuperscript{73, 74}

More recently, job offers and pre-contractual relations are to be written in Dutch.\textsuperscript{75} This legislation does not exclude translations into French. The fact that these obligations are constitutional cannot be doubted. However, their accordance with the Convention on the protection of national minorities is questionable. From the explanatory report added to the Convention, we learn that the relations between private persons and the administration escape from the free use of the languages. Whether imposing the use of the Dutch language to the employees and the employers is compatible with the right to use its own language in private or in public, as stipulated in Art. 10.1 of the Convention remains to be seen. In other words, is the obligation to use a language in the relations between private persons an interference with freedom, even if this obligation leaves the possibility to translate the text into the language of the minority?

The question remains open, but shows the difficulty to choose between the free choice of language and the principle of an official language.\textsuperscript{76} These relations are even more difficult as the language of the region is also being threatened.

4.2.2. The six communes with facilities

In the six communities with facilities, the solely the federal State is competent to regulate the use of the languages for administrative matters, education and social relations between employer and employees. Several linguistic rights have been granted to the French speaking people. The administration must use the French language if this is the language of its interlocutor.\textsuperscript{77} However, the effectiveness of this obligation cannot be insured. The commune must organise primary schools and day nurseries in French if there is a demand from more than 16 families living in this commune.\textsuperscript{78} However, French speaking parents who do not live in one of the communes on the outskirts, may not register their children there.\textsuperscript{79} The nature of these facilities remains
controversial. "For the French speaking people, it is an exception to the principle of territoriality to protect the French speaking people who are living in the Flemish territory. According to some Flemish it is simply a way to permit the French speaking people who are settled in Flanders, to adapt themselves during a transitory period by a derogation of this unilingual system."

Since 1988, the Constitution provides, in order to protect these facilities that any modification of the rules regarding the use of languages, can be done only by a law adopted by the majority of two-thirds of the total votes. This strengthening of the facilities does not prevent the Flemish government from considering them in a very restrictive way and from contemplating their abolition all together.

4.2.3. The principle of territoriality, an autonomous source of obligations concerning the use of the languages?

The Flemish authorities even try to use the principle of territoriality as an argument to impose linguistic obligations, whereas the Constitution lists the cases where the use of the languages can be regulated.

One example illustrates this 'drift' that allows territorial based rights to take precedence over the constitutionally guaranteed freedom to use the languages.

The Flemish Chambers of the State Council have tried to impose upon the communal representatives the obligation to use the language of the region and even to know this language in order to exercise their functions. This jurisprudential creation was deduced on the one hand from the interpretation of the rules regarding the use of the languages, and on the other hand, from the existence of unilingual territories as stated in Art. 4 of the Constitution. These Chambers confirmed that the existence of unilingual territories contains the principle that the members of the College and communal Councils of the Flemish region must use and know Dutch.

In their opinion regarding the pacification law, the same Chambers confirmed that this obligation for the mayor of a commune with a special linguistic statute and the priority of the language of the region over the other language are rooted in the new Art. 4 of the Constitution which divides Belgium in linguistic regions.

This example illustrates the dangers of the territorialisation of a cultural identity that gives prominence to the 'official' language, what leads to the detriment of the language of the minority and of the individual right to speak the language of one's choice.

The law of 9 August 1988, the so-called law of the community pacification, ended this controversy. It states that the knowledge of the language of the Region is necessary to exercise a communal mandate but is not a condition for the eligibility. This knowledge is indisputably presupposed for those who are directly elected, so that the validity of their mandate cannot be questioned by a possible linguistic incapacity. This presumption does not apply to the communal mandatory who is not directly elected by the population.
Conclusion

Approaching the problem of Jerusalem indirectly through the protection of minorities is not without risk, since it avoids fundamental questions such as the recognition of the legitimacy of the presence of the Israeli and the Palestinians in Jerusalem, the corresponding rights over the City claimed by the Palestinian authority and the unlawful political occupation of the City by Israel.

If international law gives us rather clear-cut answers to these problems, IPCRI and the project it elaborates provides a more pragmatic perspective. IPCRI tries to find an original solution that corresponds optimally to the demands of the two parties, while remaining simultaneously aware of the mutual concessions that the one and the other must make in order to solve the antinomic claims. In this perspective the evaluation of the protection of the minorities in Belgium may prove of interest.

It is clear that fundamental differences separate the Jeruzalem situation from the case of Brussels, as they have been outlined in the introduction. Nevertheless, as pointed out in the Introduction, several similarities exist between the two situations: the Palestinian request for the recognition of the 1967 border which might offer a guarantee against Israeli expansion. This claim is reminiscent of the Belgian linguistic border that provides a territorialisation of the Flemish cultural identity and a protection against the progressive francisation of the Flemish population.

Initially this principle of territorialisation was seen as pacification, allowing the Flemish, a cultural minority, to have their own institutions. However, this principle allowed the development of policies little compatible with the rights of the French speaking minorities located on the outskirts of Brussels. The territorialisation of the linguistic identity withdrew all legitimacy of the presence of French speaking people living in Flanders. Hence, there was no reason whatsoever to grant them any rights.

Only in the communes with facilities, did a specific system of direct election of the representatives of the communal College provide a proportional representation of the French minorities. However, no minimum representation was granted to the French speaking people as such, and therefore we cannot speak of a recognition of political rights.

In the other communes of the Brussels outskirts, no linguistic rights were attributed to the French speaking people, who were actually forced to speak Dutch in their relations with the administration. They did not have a French educational system subsidised and recognised by the Flemish community. As a result, the condition of the French speaking people, that form a substantial minority in some communes in the outskirts, is below the requirements imposed by the Convention regarding the protection of national minorities.

Only in the communes with facilities, do the French speaking people have the right to speak their language in their relation to the administration, to have their own primary schools and day nurseries recognised and subsidised by the Flemish authorities. Still, the Flemish government maintains a rigid interpretation of these facilities and tries to expand the areas in which the use of Dutch is compulsory, restricting thereby the principle of freedom in the use of the languages.
The Flemish community also restricts the cultural ties between the French speaking people of the outskirts and the French community to a minimum. The financial support of some activities of the French speaking people on the outskirts are taken to be incompatible with the territoriality principle. The Flemish community does not appear ready to promote the conditions allowing the French speaking people of these communes to keep and develop their culture and to preserve one of the essential elements of their identity, their language, as is recommended by the Convention for the protection of national minorities.

A disturbing drift is noticeable. The Flemish community submits some rights to conditions that appear to be subjective to the extent that they might gain a linguistic connotation, thereby indirectly introducing discrimination in favour of the Flemish. The principle of territoriality, initially pacifying, evolved into a system that denies linguistic pluralism, and which often sacrifices the minority in name of the fear of the ‘francification’ of the Flemish population. The territorialisation of the Flemish cultural identity resulted in the denial of the legitimacy of the French speaking presence and leads some Flemish nationalists to demand the abolition of the linguistic facilities. The result is an exacerbation of the minority/majority relations.

The Belgian experience shows how much the principle of territorialisation, the basis of the territorial claim of the Palestinians, can worsen the relation between minority and majority. Leaving the protection of the Israeli minorities in and around Jerusalem to the responsibility of the Palestinians appears therefore utopia. Several alternatives are open. It is possible to evacuate these minorities, ratifying the idea of a sovereignty exercised over a homogeneous cultural territory in defiance of ideological, cultural and religious pluralism. Facing a State in development that finds its origin in a powerful nationalism thriving on reactions against the Israeli occupation, such a solution is not unreasonable. Of course, it is possible to conceive an extra territorial statute for the Jewish colonies and establishments. However, for how long will Palestinian nationalism accept these amputations of the sovereignty of its territory?

The Brussels model proposes an interesting alternative to the difficulties closely linked to the principle of territoriality. The mechanisms organised to protect the Flemish minorities living in the Region were able to maintain peace. They go far beyond the requirements of the Convention conceiving the protection of the national minorities.

Power-sharing mechanisms are introduced. Their efficacy rests partly in the control given to the minority group. Each linguistic group verifies the powers of its members, elects and removes from office the members of the government who represent it. The same goes for the division of the responsibilities in the government: in case of a disagreement, each linguistic group chooses alternatively a group of competencies previously defined by the law.

Their efficacy also rests in their dissuasive effect. In case of provocation, the minority group can threat to block the whole decision process. The parity representation of the minority in the government, together with the collegiality and the consensus do not allow the majority to circumvent the minority. The procedure of the
alarm bell and the double majority, necessary in each linguistic group in order to adopt certain acts, also allow the minority to block decisions at the level of the Council.

However, not a single mechanism of division of power protects the Flemish minority at the communal level; this results in its complete exclusion from the local politics in communes which have no or just a few Flemish counsellors. However, in spite of the low number of communal counsellors, the Flemish minority is represented in the colleges of mayor and municipal magistrates in most of the Brussels communes. Moreover, the Flemish minority in Brussels can assert itself through its own political institutions, Flemish community and the Flemish Community Commission.

Finally, equal linguistic rights are given to the two communities. These rights are not restricted to the private domain: they can also be found in public activities such as relations with the administration, education and social relations within enterprises. The institutional personification of the Flemish minority and the recognition of its equal linguistic rights, give this minority all the means necessary to preserve its linguistic identity. The Brussels system maintains the peace between the Communities. An original balance is found between the preservation of the cultural minority and the social cohesion of the group. However, this does not prevent the Flemish minority to have the feeling to be socially and culturally dominated by the French language in Brussels.

The mechanisms of minority protection in Brussels cannot be transposed *ipso facto* to Jerusalem. Nevertheless, our analysis demonstrates that minority protection may result from a balance of power. The balance of power was achieved in a pragmatic way. The Flemish opposed the creation of Brussels demanded by the francophones. They thus imposed a limitation of the Brussels area so that 120,000 francophones living in the periphery were abandoned. About 25 year earlier, the Flemish wanted to draw a border in order to fight the Frenchification of its population. Nevertheless, in order to obtain the principle of territoriality they had to accept the creation of the communes with linguistic facilities.

The development of the system protecting minorities in Brussels is not so much the result of an a priori critical approach but rather the result of a power balance between the two communities leading to reciprocal concessions sometimes at the very expense of the minority protection itself. Matters of principle, such as minority rights and freedom as well of those of territoriality, have been pushed in the background to the benefit a pragmatically approach. The actual solutions preserve the general interest of the two communities within a specific power balance.

If the Brussels model of minority protection is of any interest to the Brussels-Jerusalem project, it is mainly by demonstrating that a pragmatic approach of the problems transcends matters of principles. Still, such a pragmatic approach is possible only between two sufficiently established states. Indeed, only an established state will be able to impose to its population the necessary concessions made to the claims of principle without risking implosion. Regrettfully, this approach disregards some minorities and may generate on the long term new problems.
Notes

1 The Flemish language region has 5,768,925 people, 57.81% of the population. The French language region has 3,188,093 people, 31.95% of the population, and the bilingual Brussels Capital Region 954,045 people, 9.56% of the population. Linguistic counting M.B. 15 October 1991). In this last region, the French speaking are about 85% of the population of Brussels. (This assessment is based on the electoral results of both the French and Flemish lists.) There are 67,618 persons in the German speaking region.

2 We will not talk about the German community. It has nothing to do with the Brussels problematic.

3 The linguistic laws of 1963 (law of 2 August 1963) arbitrarily established a linguistic border, without consulting the population beforehand, with the result that it re-attached communes with a French speaking majority to the Flemish region. It is only in 1970 that the Constitution definitely established the linguistic border.

4 Article 3bis of the Constitution adopted on 24 December 1970 states that 'each commune in the Kingdom is part of one of these linguistic regions'. Until then, the 6 communes on the outskirts were not attached to a linguistic region. Vandernoot, P. 'The division of the Province of Brabant and the protection of the minorities'.

5 Those borrows (communes) are: Rhode-St Genèse (15 French counsellors out of 25, 60% of French speaking); Kraainem (18 out of 23 counsellors, 78.2%); Wezembeek-Oppem (16 out of 23, 69.5%); Linkebeek (13 out of 15, 86.6%); Drogenbos (4 out of 15, 26.6%) and Wemmel (8 out of 23, 35%). In these two last communes there were bilingual lists so that the percentage of elected French speaking with regard to the Flemish is not entirely representative of the real percentage of French speaking vis-à-vis of the Flemish. If we take as a reference the language which was used to complete the form for the radio and television tax, we obtain for the commune of Drogenbos 62% of French forms and for Wemmel 46.2% of French forms. (Q.E. N° 869 de G. CLERFAYT of 24 January 1994, Q.R. Chambre N° 96 of 28 February 1994). See: Persoons, C. 1996. Bruxelles et sa périphérie en quelques chiffres [internal doc. du F.D.F.].

6 Overijse (10 French speaking communal counsellors out of 27, 37%), Tervueren (4 French counsellors out of 25, 16%), Hoeilaart (3 French speaking counsellors out of 21, 14.2%), Dilbeek (6 out of 33, 18%), Leeuw St. Pierre (5 out of 29, 17.2%).

7 Article 129 §2 of the Constitution.

8 Article 127 §2 of the Constitution.

9 Because no linguistic counting exists, this is based on electoral results.

10 See the explanatory report with regard to the Convention for the protection of national minorities.

11 There is a precedent. The election of the Council of the agglomeration was organised based on a legislation allowing the presentation of bilingual lists. The list of the Rassemblement bruxellois presented French and Flemish speaking candidates. The Flemish minority parties contested the fact that the latter belonged to the Flemish community.

12 Article 22 §3 of the special law of 12 January 1989.

13 In order to secure a proportional representation of the two linguistic groups, a preliminary distribution of the seats among the linguistic groups precedes the distribution of the seats among the lists. (art. 20§2 of the special law of 12 January 1989).
At least one third of the members of the committee of the Council must belong to the linguistic group which is the least numerous; they are elected by their respective linguistic groups which reinforces their autonomy with regard to the majority group (Article 27 of the special law of 12 January 1989). The linguistic group which is in the minority must be represented in each Commission by at least one member (Article 28 of the special law of 12 January 1989). Moreover, because the Flemish-speaking people only have 11 seats in the Council, a system of temporary replacement is foreseen to replace Ministers and Secretaries of State in the Council (Article 10bis of the special law of 12 January 1989). However, these substitutes only deliberate in case the Ministers or Secretaries of State do not exercise their prerogatives.

Article 31 of the special law of 12 January 1989

Article 35 § 1er of the special law of 12 January 1989.

Article 36 § 1er, al. 5 of the special law of 12 January 1989.

They exercise competence concerning related matters regarding institutions which, because of their organisation, cannot be exclusively linked up with either of the communities.

For the Region: articles 34 and 35 of the special law of 12 January 1989 with regard to the Brussels institutions and for the Agglomeration: article 48 of the same special law. The College of the common community Commission is different from the composition of the Government of the Region or of the College of the Agglomeration in that the Minister-President has only a consultative voice there without any bi-community competence. He presides however, the united College (Art. 75 to 77 of the special law of 12 January 1989).

It is not completely correct to say that the "Exécutif, sensu lato, is of a parity representation. Three Secretaries of State are added to the members of the government. The competence of these Secretaries of State is established by the minister. One of the three Secretaries of State must belong to the linguistic group which is the least numerous. If formally, the Secretaries of State are not part of the Government, they can however, attend completely or partially its meetings and they are responsible in the same way as the Ministers towards the Council (article 41 of the special law of 12 January 1989 regarding the Brussels institutions). The exécutif sensu lato is now composed of 5 French speaking people (the Minister-President, two Ministers and two Secretaries of State) and 3 Flemish (two Ministers and one Secretary of State).

Therefore, two alternative mechanisms have been foreseen. In case an agreement is reached between the ruling parties, the list of candidates for the government needs the support of the absolute majority of the members of each linguistic group. If, on the contrary, no agreement is reached within 15 days after the election, each linguistic group will separately choose its two ministers; the President being elected with an absolute majority of votes.

For the Region: article 37 of the special law of 12 January 1989 regarding the Brussels institutions; for the common community Commission (matters belonging to both communities): article 53 of the above mentioned special law and for matters regarding the Agglomeration: article 53 of the same special law.

Decree of the assembled College of the common community Commission of 13 July 1989 and 5 July 1995 establishing the distribution of the competencies between the members of the assembled College of the common community Commission.

See the decree of the Executive of the Brussels-Capital Region of 12 July 1989 and of 13 July 1995 establishing the distribution of the competencies among the Ministers. The regional statistics,
management of the administrative buildings, scientific research and, since 1995, the national and international promotion of Brussels are all common competencies of the Ministers who belong to different linguistic groups. See also the decree of the assembled College of the Joint Commission for Community Matters of 13 July 1989 and 5 July 1995 establishing the competencies among the members of the assembled College. Each competence depends on the joint management of the Ministers belonging to different linguistic groups.

25 Article 8 of the decree of 4 July 1991 of the Executive of the Brussels-Capital Region regulating the management and the signature of the acts from the Executive. Article 6 of the decree of 13 July 1989 of the assembled College of the common community Commission regulating the management and the signature of the acts from the assembled College.

26 For the Region: article 36 of the special law of 12 January 1989 regarding the Brussels institutions referring to article 69 of the special law of 8 August 1980 of the special law regarding the institutional reform; for the Agglomeration: article 48 of the special law and for the common community Commission (for matters concerning the two communities): article 75 of the same special law.


28 Article 5 of the decree of 4 July 1991 of the Executive of the Brussels-Capital Region regulating its management and signature of the acts of the Executive.


30 Delpéré, F. 1986b: 117.

31 This fundamental rule protecting the minorities has, however, something in common with the process of co-decision with unanimity. When there are tensions in the 'community' regarding a dossier, the Flemish minority—the ruling minority as well as the opposition—tend to unite. As a consequence, resignation of the ruling Flemish minority would not allow finding a partner in the Flemish minority of the opposition in order to resolve the conflict. The ruling French-speaking majority is thus obliged to come to terms with the Flemish minority. This is what certain people call 'the majority is taken as hostage by the minority'. Paradoxically, the minority can impose its views to the majority with the risk of blocking the decision-making process.

32 For the Region: article 36 of the special law of 12 January 1989 regarding the Brussels institutions; for the Joint Commission for Community Matters (matters regarding both communities): article 72 of the same special law and for the Agglomeration: article 48 of the same special law.

33 This motion is only acceptable if it presents a successor to the Government or to one or more of its members depending on the case. This system of 'constructive' motion allows to secure a greater stability to the Government.

34 The motion directed against the President must be adopted by the majority of the members of the Council.

35 This concerns the communes of Ixelles and Saint-Gilles.


37 Article 279 a1; 2 of the new communal law of 24 June 1988.

38 It concerns the communes of Forest (2 councillors out of 27), Uccle (1 councillor out of 41), Auderghem (1 out of 21) and Watermael-Boitsfort (1 out of 27). The communes which took
advantage of this possibility are Kockelberg (4 out of 25), Saint-Josse 1 out of 27), Woluwé Saint-Pierre (3 out of 25), Woluwé Saint-Lambert (4 out of 33), Etterbeek (1 out of 33), Jette (4 out of 35) and Molenbeek-Saint Jean (4 out of 39).

39 Advice of the State Council of 18 September 1990 regarding a preliminary project of decree regarding the organisation of the concertation and the participation in the cultural communal policy.

40 Congresbesluit van brusselse Vlamingen', Doc. VI. Gem.Com., 1993-1994, 75, p. 6, n° 3


43 See chapter concerning the use of the languages.

44 See endnote n° 5.


46 Article 15 § 2 of the new communal law of 24 June 1988.


48 Articles 264 and 265 of the new co-ordinated communal law of 24 June 1988.

49 See endnote n° 6.

50 The possibility to transfer competencies is only open for the French community.

51 For cultural matters and education.

52 For matters concerning individuals.

53 Article 127 § 2 of the Constitution.

54 The initiatives taken by the Flemish government, to strengthen the Flemish character of the outskirts, include a.o. the withdrawal from the cable of the regional bilingual television station "Tele-Bruxelles" and the modification of the decree concerning local policies of aid to the youth, with the intention to use the financial resources foreseen in this decree for other initiatives with a more explicit Flemish character. (Note from the Flemish Government regarding the initiatives from the Flemish Government with regard to the Flemish outskirts of Brussels and Fouron, approved on 9 November 1994.)

55 Decree of 26 June 1996 modifying the decree of the Flemish Government of 20 July 1994 regulating the management of the 'Investeringsfonds voor Grond- en Woonbeleid voor Vlaams-Brabant' and also regulating the conditions regarding the social housing project.

56 Moreover, and without any interpretation of the text based on the language, one can wonder if the criterion of difference imposed by the Government on the authority competent for the housing, is an objective criterion for the purpose of the social housing projects. If not, the text contains a discrimination which is incompatible with articles 10 and 11 of the Constitution.

57 Note of the Flemish Government regarding the initiatives of the Flemish Government with regard to the Flemish outskirts of Brussels and Fouron, approved on 9 November 1994 expressly mentioning the initiative of Vlabinvest.

58 One can question the compatibility of such criteria with the right of establishment guaranteed by article 2 of the additional Protocol N°4 of the European Convention for Human Rights and fundamental liberties and article 14 of the convention protecting human rights and fundamental liberties. An appeal has been introduced before the State Council.

59 See article 4 of the Convention that explicitly prohibits any discrimination based on the
fact that one belongs to a national minority. See also article 2 of the international Pact regarding the economic, social and cultural rights or article 2 of the international Pact regarding civil and political rights, article 14.

60 Decree of the Arbitration Court of 3 October 1996.
61 However, a positive point has been noted by observers (Question by C. Persoons to the Council of the French Community, 15 October 1996). The arbitration Court expressly recognises the existence of 'French speaking' minorities on the outskirts. In case of adoption without reservation of the Convention related to the protection of national minorities, this jurisprudential recognition could, besides the use of languages, also have unsuspected judicial effects and oblige Flanders to adopt a policy which is more respectful vis-à-vis the rights of the French speaking minorities located on its territory.

62 See the law of 15 June 1935 concerning the use of languages for judicial matters.
63 Arbitration Court, order N° 10/86 of 30 January 1986 according to which article 129 of the Constitution has added an exception to the principle of freedom to use the languages inscribed in article 30 of the Constitution.
64 Article 52 § 2 of the co-ordinates laws of 18 July 1966 regarding the use of the languages.
65 Articles 18, 41, 43bis §4 and 46 of the co-ordinated laws of 18 July 1966 regarding the use of the languages for administrative matters and article 32 §1er of the law of 16 June 1989 regarding different institutional reforms.
66 Article 21 § 7, 38 § 4, 43 and 44 of the co-ordinated laws of 18 July 1966 regarding the use of the languages for administrative matters.
67 Article 21 § 2 to 5 and 38 of the co-ordinated laws of 18 July 1966 regarding the use of the languages for administrative matters.
68 Article 5 of the law of 30 July 1963 regarding the linguistic regime in the educational system.
69 Article 5.2 of the Convention regarding the protection of national minorities.
70 Article 13.1 of the Convention stipulates that the right to create and manage their own private educational establishments does not imply any financial charges for the partics.
73 Article 12 and 33 § 1er of the coordinated laws of 18 July 1966 regarding the use of the languages for administrative matters. The exclusive use of French based on the same articles is imposed in the unilingual French language region.
74 Decree of the Flemish Community of 19 July 1973 regulating the use of the languages for social relations between the employer and the employees.
75 Decree of the Flemish Community of 1 June 1994.
76 Of course, Flemish is not the only official language in Belgium and therefore Flanders. There are three official languages in Belgium. However, the territorialisation of the rules concerning the use of the languages, de facto, results in defining Flemish as the official language of the Flemish territory, with the exception of the communes with facilities.
77 Article 25, 34, 35, 41, 43bis §4 and 46 of the co-ordinated laws of 18 July 1996 regarding the use of the languages for administrative matters.
78 Article 1er al. 2 of the law of 30 July 1963 regarding the linguistic regime in education and article 7 §3 of the law of 2 August 1963 regarding the use of languages in administrative matters.

79 Article 7 §3 of the law of 2 August 1963 regarding the use of the languages for administrative matters. The C.E.D.H. has expressly condemned the discriminating restriction to the rights of French speaking parents residing in Flanders to inscribe their children in the schools of their choice. Indeed, Flemish children can be inscribed in any school whatever their mother tongue and the place of residence of their parents. Until today, no reaction has come. (CEDH. decree of 23 July 1968, Belgische Taalzaken, Serie A, vol. 6).

80 The analysis of Senelle, R. 1994. in Le Soir, 19 Dec.: p. 3. See also the more subtle position of the Flemish politician Deschouwer, K. 1994. in Le Soir of 22 Dec.: 2).


83 See also the 'projet de Constitution flamande' of Clement, Pas, Seutin, Van Haegdoren and Van Nieuwenhoven who received the E. Van de Gucht Prize in the 'Vlaams Parlement' (September 1996).

84 The Arbitration Court in its decree of 26 March 1986, N° 17/86.


86 There has been a precedent. The CEDH has judged that, in an institutional system inspired by the principle of territorialisation in an effort to establish a balance between the communities by means of several mechanisms and to calm the linguistic differences, it is not contrary to the rights of voting to oblige linguistic minorities to give their votes to persons able and ready to use the language of their region. (CEDH, Affaire Mathieu-Mohin et Clerfayt', decree of 2 March 1987, serie A, N° 113).

87 Decree by Happart, N° 26.944 of 30 September 1986.

SOVEREIGNTY
TRANS-CONSENTUAL CONSTITUTIONAL LAW BETWEEN

ISRAEL AND A PALESTINIAN STATE IN THE FUTURE OF JERUSALEM

Gershon Baskin (IPCRI)

Introduction

This paper begins with the assumption that the resolution of the Israeli-Palestinian conflict will result in the creation of a sovereign Palestinian state which will enter into a full peace treaty with the State of Israel. Today, prior to real negotiations on final status, the standpoint of Israel’s government is that a sovereign Palestinian state with Jerusalem as its capital poses a real threat to Israel’s perceived national and religious aspirations and even its very survival. Israel fears and is opposed to Palestinian sovereignty because a sovereign Palestine would possess:¹

1) the right to raise an independent army
2) liberté de guerre – the right to wage war²
3) the right to enter into independent foreign treaties including defence pacts which could endanger Israel
4) the sovereign rights on land, natural resources and airspace; and
5) the right to control borders and to determine immigration policies. It seems that this kind of solution for Jerusalem is precisely what Israel is most fearful of. The possibility of another state having sovereignty in Jerusalem immediately creates images of a divided city with walls, barbed wire, mine fields, snipers and armies.

The article by Rotem Giladi about the changing nature of sovereignty in international law was included here in order to help understand that modern sovereignty infers significant limitations on the ability of states to act completely independently. This point, however, should not be overstated because there appears to be a large gap between what international law obligates states to do and what states actually do. States still resist very strongly, limitations on their sovereignty from any source, particularly where issues of security are concerned. For that reason, until today, the Government of Israel and the Prime Minister in particular have been quite clear in stating their objection to any form of Palestinian sovereignty.

The main challenge facing Middle East peacemakers today is to find a mechanism for agreements which will, on the one hand, effectively allay the fears of Israel regarding a sovereign Palestinian state, and on the other hand, allow Palestinians to achieve an equal standing to the rest of the community of nations throughout the world. In terms of Jerusalem, the challenge is to create a mechanism of agreements that would allow for Jerusalem to be the national capital of two states while guaranteeing that the presence of two sovereigns in one city will not create a divided city. The challenge of this paper is to attempt to provide some thoughts on the two main points above while making reference to the Brussels model.
The comparison with Brussels in this context is quite difficult and it should be stated from the outset that in Brussels there is no problem of conflicting sovereignties. If this is so, then why compare? From the point of view of the author, the people of Brussels have confronted some of the same questions that must be and will be confronted in Jerusalem. Some of these questions are: How to confront questions of political rights and demographic imbalances? How to create governmental structures that allow for autonomy of the communities without creating divisions which could endanger stability and unity? How to allow for the smooth running of government and services for different populations with varying needs and aspirations?

While it is clear that the two cases, Jerusalem and Brussels, are vastly different, there are several lessons from Brussels which could be useful in Jerusalem. This paper attempts to point to several of them as a starting point for seeking workable solutions for Jerusalem.

The case of Jerusalem, and of Israel/Palestine is presently most difficult because of the almost total lack of trust between the sides. One of the most basic problems of the peace process between Israel and the Palestinians remains the high level of suspicion and mutual distrust between the sides. The Oslo Process aimed at creating an interim period with the hope that during this time enough trust could be developed so that once the difficult final status issues would be confronted, it would be easier because the sides had already experienced several years of relative peace. It was hoped that through a steady program of developing confidence building measures, the relationship between the sides would be qualitatively improved. This, however, has not happened and now, three years into the process, in many respects, there is even more suspicion and distrust than prior to the first initial stages.

Any final status peace treaty, especially one which provides solutions for the future of Jerusalem, will have to be based largely on the development of trust between the sides. Countries sign treaties of which they know that the other side might break them, but they trust that they will not, either because of power politics, national interests, or a genuine desire to honour its commitments. The Israeli-Palestinian situation, and that of Jerusalem in particular is difficult primarily because of the lack of trust and the perceivedly high stakes involved. The history of the Oslo Agreements thus far has shown a considerable amount of breaches by both sides with mutual recriminations and accusations. In many respects, there is an underlying assumption by both sides currently negotiating that the other side will not fully uphold its side of the agreement. As a result, the sides are searching for mechanisms of over-compensation in the agreements taking into account the violent political culture for the lack of tolerance which permeates in all aspects of the Israeli-Palestinian conflict. All future agreements are likely to be extremely explicit and elaborate in order to provide more than enough guarantees for the protection of vital and perceived interests of both sides.

One approach which should be considered by the peacemakers particularly with regard to Jerusalem is an incremental one. One of the first lessons to be learned from the Brussels model and from the model of the European Union as well is the lesson of graduality. The architects of the new Europe started with small, incremental steps to
build slowly and over time a level of trust and confidence (cemented by economic interdependence) which has enabled the development of the European Union. Likewise, the Brussels model has developed over time with the understanding that its various elements are based on compromises which need the test of time to determine their success and longevity. In Jerusalem too, once certain principles are adopted, it may be useful to utilise the incremental approach which could begin to lay the framework of a final status solution.

In the first step, the sides should each adopt a Entrenched Basic Law which states that Jerusalem will remain one open city with guaranteed free movement throughout its borders for all residents and visitors to the city. There will be no walls, blockades, fences or internal borders within the city. Once this Law is adopted by the legislative bodies of each side a new legal mechanism will be born which can be used by the parties in the future of the difficult negotiations between them. This new mechanism, I call, “trans-consensual constitutional law”, meaning the mutual agreed adoption of treaties by two parties as specific constitutional laws of their own bodies of law. This mechanism of turning elements of treaties into Constitutional law provides the kind of over-compensation mentioned above and strengthens the possibility for trust and confidence building between the sides. It is true that Article 39 of the Vienna Convention on the Law of Treaties states that neither side of a treaty can amend it unilaterally. In a more trusting situation, Article 39 might suffice, however, in the Israeli-Palestinian conflict, the use of “trans-consensual constitutional law” may help to cement better relations through a process of guaranteeing that the treaty is respected through its adoption as Constitutional Law.

The process sketched above could be repeated each time the sides arrived at a new chapter in the treaty of Jerusalem. Each time the treaty would once again be presented to the Legislature of each side and adopted as Constitution Law. Once adopted by both sides, it would come into effect. This mechanism meets the challenge of graduality and provides for incremental advances in the search for the resolution of the Jerusalem question. Now, what about sovereignty?

One of the easiest ways to deal with a territory which is claimed by two national movements could be to divide that territory into two separate areas under two separate sovereignties. In such an arrangement, each side would hold sovereignty over the area which it claims is most vital to its own interests and the two sovereign powers could negotiate between themselves arrangements for co-operation, if so desired, or for non-co-operative coexistence if co-operation is not desired or not possible.

Former Israeli Prime Minister Yitzhak Rabin described the most likely outcome of negotiations with the Palestinians on final status as ‘a Palestinian entity which is more than autonomy but less than a state’. Prime Minister Netanyahu has spoken in similar ways to Rabin. The concept presented by both Rabin and Netanyahu provides a significant imbalance in determining the nature of sovereignty for both sides. Israel, according to their thinking, would enjoy full (or absolute) sovereignty, at least vis-à-vis the Palestinians, while Palestinians would not enjoy it at all. Instead, according to their thinking, Palestinian legal jurisdiction would be limited to those aspects which
do not contain the main elements of state sovereignty, mainly control of borders, entering into pacts and treaties with other sovereign states, control of natural resources and air space.

In order for any peace plan to be accepted in Israel which envisages the establishment of a Palestinian state, the details of the plan must come to terms with Israel's perceived and legitimate fears and provide for arrangements which would effectively assuage those fears and guarantee that Israel's most vital interests would not be threatened. Likewise, if Palestinian sovereignty is translated into the creation of a Palestinian state and if that sovereignty also applies over parts of Jerusalem, a formula must be devised which would guarantee that Jerusalem would remain one city, undivided (in a physical sense), and that free movement and access throughout the city is assured. As mentioned above, that formula could be "trans-consensual constitutional law".

If we assume (as I do) that Palestinian sovereignty is a sine qua non to the establishment of Israeli-Palestinian peace and if we assume that Israel will not agree to the existence of a Palestinian state that would possess the full rights of a sovereign state then it can be assumed that either:
1) there will be no Israeli-Palestinian peace; or
2) that Palestinian sovereignty would be limited in such ways that would provide sufficient guarantees against its taking actions against Israel's vital interests.

Due to the fact that the leaders of Israel seem to think about two very differing natures of sovereignty (one limited for Palestinians and one expanded for Israel) it is necessary to think about how to provide those guarantees that will answer one of the main challenges stated above: how can a Palestinian state coexist with an Israeli state in peace. It is very likely that the final status arrangements reached between Israel and the Palestinians will have significant imbalances between them and that, for example, the Palestinian state will not have an army with offensive capabilities while the IDF will continue to exist in full and perhaps even expand. Likewise, Israel will most likely demand and receive almost full control of the airspace above the Palestinian state. These imbalances, which relate mostly to physical strength, should not also create a situation whereby the Palestinian state is subservient to Israel. There must be mechanisms for balances and checks on unilateral decision making which effects the rights of the other side in order for any such arrangement to last and provide the infrastructure for real peacemaking. This research is, therefore, hopefully quite valuable as it may provide some suggestions which could be useful during the official negotiations.

The main concept employed in "trans-consensual constitutional law" is that each side voluntarily limits its jurisdiction and/or sovereignty over specific areas or functions as a mechanism which strengthens the likelihood of compliance and adherence to treaties between them. The concept is based on mutuality and reciprocity in that in order for it to work and succeed, both sides are required to translate the international agreements between them into parallel acts of constitutional law. The first step taken, as specified above would be a constitutional law on the unity of Jerusalem. This law would not deal with the question of sovereignty over
Jerusalem, as that would require further negotiations, however, it would guarantee that both sides will take appropriate actions to guarantee that Jerusalem will not be divided.

The second step that should be taken by both sides is the creation of a Constitutional Law (an Entrenched Basic Law) which states that amendments to the Constitutional Laws, which have been and will be enacted in parallel by the two sides (i.e. “trans-consensual constitutional laws”), require the prior agreement of both sides. This Law puts greater restrictions or limitations on the possibility of unilateral decisions, which therefore could be perceived as breaches of the treaty between the sides. This Law could be perceived as a limitation on state sovereignty in that the ability to change an Entrenched Basic Law is deemed dependent on the agreement of another state. It may be difficult for a state to accept in advance that it’s sovereign ability to make and change constitutional laws is contingent on the agreement of another state, yet this may be the kind of over-compensation required in the case of Jerusalem to enable agreement between the sides. An internal contradiction does exist here in that this kind of agreement may require higher levels of mutual trust than currently exist, yet this kind of mechanism also aims to answer that fact as well. The need to create stringent limitations on sovereignty seems to be a prerequisite to agreement between the sides. If the Palestinians will be required to accept limitations on their sovereignty with regard to their physical strength (e.g. army, air-space, etc.), Israel may be required to accept certain limitations on its sovereignty. Without certain kinds of limitations which are parallel and mutual, the chances of reaching agreement are severely limited.

1. Further issues of sovereignty

The basis of the suggestions for the issue of sovereignty in the future status of Jerusalem rests in the following principles:
1) State sovereignty is linked to a particular territory.
2) State sovereignty is often limited by a state itself when it enters into international agreements, treaties, conventions and/or international organisations or unions.
3) State sovereignty is limited by parallel and mutual limitations of other states, such that states cannot impose their sovereign powers over territories or populations of other states.
4) State sovereignty can be voluntarily suspended or waived over specific functions.
5) State sovereignty can be voluntarily suspended or waived over specific, defined territories.

Recognising the limitations of sovereignty today in international law and in international relations is an important step in the process of being able to reach an agreement. In discussions of possible resolutions of the conflict, the concept of sovereignty is generally referred to in terms of absolute sovereignty. It is quite clear that without a better understanding of the limits of sovereignty, and furthermore, without agreement on clear definitions of those limitations, no future agreement is likely.
2. Translating principles into plans

The initial goal of the model, in light of the nature of so many years of conflict, should be for each side to have the maximum amount of control and competencies within its own jurisdiction. It is important, particularly at the beginning, for each side to be able to have as much control over its own ‘destiny’ as possible, limiting the ability of the other side to interfere in the internal affairs of the other. However, the model will dictate, very clearly, the limitations voluntarily imposed on each side by itself and by the agreement. The satisfaction provided by knowing and understanding that the other side is limited in the same way should help to overcome some of the initial frustrations of not holding ‘absolute’ sovereignty over all of the territory.

The following are elements of a plan which have been developed over the past years in several seminars and publications of IPCRI. These elements relate directly to the points listed above. In short they are:

1) Sovereignty in Jerusalem will be divided between Israel and a Palestinian state on the basis of the population make-up of the territory in question. Jerusalem is an extremely segregated city and every piece of property has a national identity - either Israeli or Palestinian. Therefore, areas with a Palestinian national identity will fall under Palestinian sovereignty and areas with an Israeli national identity will fall under Israeli sovereignty.

2) The sovereignty of Israel and Palestine in Jerusalem will be limited through the adoption of “trans-consensual constitutional” laws which will be based on the treaty between them and will have the status of Entrenched Basic Laws in each side’s respective body of constitutional law. These “trans-consensual constitutional laws” will form the basis of a Jerusalem Charter which can be understood as a kind of ‘community law’ as exists in the European Community.

3) Sovereignty in Jerusalem will be clearly delineated according to agreed internal boundaries which exist on a map which will be agreed upon. There will be no physical boundaries within the city limits as agreed upon between the sides and which will be stated as such through an act of “trans-consensual constitutional law”. Certain functions or certain territories could be granted different status with regard to its sovereignty. It could be determined that economic policies in the city of Jerusalem be dealt with by joint governmental bodies. Functions regarding infrastructure should certainly be dealt with in union between the sides.

4) The sovereignty of the states could be voluntarily waived over specific functions. Here, the most obvious function or area of sovereignty should relate to the status of international communities and bodies in Jerusalem. Palestine and Israel should not be enabled to resolve the entire Jerusalem question, ignoring the states of the world-wide religious communities that hold Jerusalem sacred. There might be room for some kind of multi-national treaty with many States as party and with an adequate mechanism of compliance verification for the purpose of securing for humanity at
large those aspects of the Jerusalem question that have to do with the safeguarding of its universal cultural and religious heritage.

5) The sovereignty of the parties could be mutually waived over specific areas. The most sensitive part of the Jerusalem question is the future status of the Old City. This one square kilometre area will be the cause of the greatest amount of disagreement between the sides in the negotiations. It is highly unlikely that one of the sides will easily give in to the other. It is also highly unlikely that the sovereignty of this territory will be divided as might be the case with the rest of Jerusalem. There are two other possibilities: 1) the possibility that both sides agree to suspend or to waive sovereignty over this area, so that formally it is neither Israeli nor Palestinian, or 2) that the two sides agree to a formula of joint undivided sovereignty over the Old City.

In either case, the sides will have to confront the legitimate rights of the international community in general and the religious communities in specific. Until the issue of sovereignty over the Old City is agreed upon, functional arrangements for the governance of the area and the provision of services can be decided upon and agreed including a mechanism for providing for the direct representation of the residents of the Old City.

With regard to the Holy Places within the Walls of the Old City, there exists what is referred to as the ‘status quo’, which has been developed over the past centuries and which is mainly an agreement between the various Christian communities with regard to the control of the Christian Holy Places. This ‘status quo’ appears to be acceptable today to the communities in question. Likewise, there is a less formal status quo arrangement between Israel and the Muslims which has lasted since 1967 which gives the Muslims control over the Haram al Sharif (the Temple Mount). This arrangement seems to be acceptable to mainstream Jewish bodies such as the Chief rabbinate of Israel. There may be a need to modify these arrangements which would give the Palestinian more direct authority over areas of security on the Haram al Sharif, however this must be reached through agreement with Israel taking into account Israel’s security needs and requirements in Jerusalem.

It is highly unlikely that a change of this status quo could emerge through agreement in the near future. Any change such as the constructing of a synagogue on the Temple Mount or allowing for Jewish communal prayer on the Mount is likely to bring about an explosion of Biblical proportions and therefore is ill advised.

3. The Jerusalem charter and “trans-consensual constitutional law”

The model described is based on the creation of a new legal mechanism of shared law by the two states, or rather the adoption of the same legislation into the Constitutional law of each state separately. It should be noted that both Israel and the Palestinian Authority do not yet have a formal constitution. Israel has a developing constitution or a collection of Entrenched Basic Laws which have a higher status that regular laws in that they require a larger majority to amend or annul them. The Palestinian Legislative Council is currently debating the forth draft of their Entrenched
Basic Law which many Palestinian legal experts have dubbed ‘the Palestinian Constitution’.

The legislation which is proposed in this paper is essentially the treaty which will be reached as a result of negotiations between the Parties. The treaty itself, or the operational aspects of the treaty, will be drafted into legislation and brought before the supreme sovereign body of each state, in Israel’s case - the Knesset, and in Palestine, the legislative Council or Parliament. This process demands the constitutionalising of the treaty between the two States into an inseparable structure of law within each State separately. In Israel, international treaties are currently not ratified by the Knesset and the Knesset has no formal role in the process of making treaties. The Oslo Agreements were brought before the Knesset for debate, but other than voting ‘no confidence’ in the government which presented the treaties, the Knesset had little formal role to play. At a later time, the Israeli government did bring before the Knesset legislation which was required for implementing certain aspects of the agreements. The Oslo Agreements were brought before the Executive Committee of the PLO which ratified the treaty and empowered Chairman Arafat to implement them. In the model proposed herein, there would need to be certain legislative or policy adjustments on both sides in order to give the treaty between the sides the power of constitutional law.

The treaty itself, or the parts of the treaty between the two States which determine the precise nature of mutual limitations, reciprocity, and parallel relations between them, once enacted into the laws of each state, will form the first element of the requirements necessary for ensuring that Jerusalem will remain one physically undivided city with two sovereigns possessing sovereignty over specific territories in the city. The legislation enacted in both states will be parallel and identical in nature. Once enacted as part of the internal law of both states, the governments, be they municipal or national, would be limited by them in what kind of actions they can take unilaterally within the boundaries of Jerusalem.

The second integral element in the proposed model is that the legislation itself as Entrenched Basic Laws will impose significant limitations on each State’s sovereignty in that the ability to change the legislation will be possible only by agreement of the two parties. Thus the outcome of the treaty after the process of legislation on both sides will lead to the creation of a new body of law which is called the Jerusalem Charter. The Jerusalem Charter as a new body of law is composed of the same Entrenched Basic Laws adopted by both states and defines the mutual and parallel limitations of their sovereignty in Jerusalem. Because the Charter is composed of Entrenched Basic laws of each State and is based on an international treaty between them, it becomes more difficult to accord precedence to a unilateral measure or supremacy of the individual legal system above the specific clauses of the Charter itself. The transference of certain defined elements of each State’s sovereignty consisting of defined rights and obligations from the States to the Charter therefore creates a permanent limitation of some sovereign rights against which clearly defined subsequent unilateral acts are incompatible with the Charter.
The model seeks to define in as much detail as possible the distinct rights of the communities with the knowledge that the two interwoven populations will likely clash unless separate rights and duties are as clearly defined as possible. To do so it is necessary to move towards more mutuality in relations between the communities by defining a mutually dependent relationship in which some of the powers of each party remain in the grasp of the other.

Jerusalem Charter is a body of law similar to the notion of Community Law in the European Union. Although the Community Law seems to hold (at least in some instances) supremacy above and beyond the individual laws of each State, this mechanism is a direct outgrowth of the sovereignty of each State. The prerequisite for a State to agree to limit its sovereignty is in fact a recognition that it does possess sovereignty. Furthermore, the agreement to create the Charter (or the equivalent of the Community Law) through a process of legislation is a recognition of the sovereignty of the States' supreme possessor of sovereignty.

The initial recognition of this sovereignty is the legal mechanism allowing for the Charter to come into existence. The Charter is then an agreement based on parity, mutuality, reciprocity and parallel limitations. The model here suggests creating a situation whereby it becomes more difficult than in usual cases for a country to repel a treaty by a simple legislative act.

4. Lessons from Brussels

The Jerusalem Charter will be an agreement based on parity, mutuality, reciprocity and parallel limitations. much in the same way that the agreements between the Brussels communities exist as a body of law in the Brussels region.

1) The Brussels model is based on a very complex and very defined set of agreements and understandings with regard to decision making and bodies of representation. The complexity of the model may seem at first to be confusing and unclear as to what body has the power or jurisdiction to make what decisions, however, in-depth analysis of the model shows a clear, logical and workable division of responsibilities or competencies which provide the communities in question with a sense of relative control over their vital interests. This pattern of clear and complex divisions of functions of the various decision making bodies is essential for Jerusalem as well.

2) The Brussels model has within it clearly defined mutual and parallel limitations of power and divisions of competencies. This prevents one community from making unilateral decisions which have a direct effect on members of the other community. The greatest challenge facing Israel and the Palestinians in Jerusalem is how to develop a workable model which allow two sovereign states, Israel and Palestine, to both hold some sovereignty in Jerusalem without tearing the city into two separate and physically divided entities. Here, the model of Brussels with its complex understandings based on mutuality and parallelism can be very useful, primarily with regard to the accepted limitations and defined competencies afforded to each community.
3) The Brussels model eliminates a demographic war between the communities by providing for parity from the outset for the two communities in the definition of the competencies of each community. By agreement that population figures will not determine the parity of rights for the two communities, a very powerful element of conflict has been removed from the region. In Jerusalem, the demographic war as well as a very intensive geographic war between Israelis and Palestinians has created and fostered increasingly greater tensions between the two communities. Any resolution of the conflict in Jerusalem will have to find some way to put the question of demography to rest. As long as Israelis and Palestinians struggle to achieve a demographic majority in order to strengthen their claims to the city, there will be no chance of reaching peace.

The demographic situation in Jerusalem is also a reflection of the artificial external boundary of the city which was unilaterally determined by Israel in 1967. This boundary today excludes Palestinian communities which have developed and expanded outside of the municipal boundary and which in the future should be included within the city in order to take into account the demographic realities on the ground. The redrawing of the external boundaries will most likely be required to create a more balanced situation as part of the peace agreement. It is important though, to also build into the treaty elements, such as exist in Brussels, in order to decrease the importance of the demography of each community.

4) The model of Brussels was worked out due to an agreement to link issues and to make trade-offs between conflicting claims and issues. Likewise with Jerusalem, it may be required to link several issues left to be negotiated in the Palestinian-Israeli conflict and therefore, compromises on Jerusalem may be more possible or feasible than as it seems now prior to any real negotiations. Both Palestinians and Israelis may be willing to make inconceivable compromises later if the other side is willing to compromise on other issues that relate to strategically important national interests. Without going into details, the final status issues that must be negotiated on between Israel and the Palestinians mainly, are Jerusalem, the Israeli settlements, borders, Palestinian refugees, natural resources and security. These issues will not be necessarily negotiated on separately, detached from each other. Instead, it may be that certain Israeli compromises on one issue could allow for certain Palestinian compromises on a different issue. A package deal may be easier to work out than the case which calls for negotiating each issue independently of the others.

5) In Brussels there is a mixture of community autonomy and regional power sharing. Unlike Brussels, in Jerusalem, there are likely to be clear lines of demarcated territory which fall under the separate jurisdiction of each community separately, while there will be numerous functions which will need to be based on power sharing between the communities. This will most likely relate to infrastructure, regional planning - economic and physical, certain elements of security, etc. This may require the establishment of a joint body or joint bodies which will administer services and engage in joint planning. There may be a need for a regular forum for members of separate municipal bodies to meet and work together. The formalisation of these bodies would create regional structures of power sharing similar to what exists in
Brussels. It may be conceivable that at some time in the future separate elections are
held within Jerusalem (on both sides) for a regional body which would function in its
specific areas of jurisdiction alongside of the separate municipal and national bodies of
government. (This could fit into the plan of incremental developments at some time in
the future).

6) In Brussels, in the regional power-sharing mechanism a policy of
"consociationalism" has been employed to guarantee that simple majority decision
making would not be allowed to impose a negative effect on the democratic stability
of the system. Within a regional power-sharing mechanism in Jerusalem, the sides
will also have to agree to make decisions in a way which would not have one side
continually imposing its will on the other. Likewise, the decision making process in
the regional bodies will have to be based on parity regardless of other demographic
realities. The methodology of decision making by consociationalism may be one way
to assure that both sides will work to the maximum to reach decisions which will have
the maximal mutual benefits.

The question of consociationalism is very complex. First of all, traditional
consociationalism is based on understandings and power-sharing between elites, with
minimal intermingling between the constituencies. This was the case in Lebanon, the
Netherlands, and to a degree in Belgium, but not in Brussels proper where the two
communities are distinct but hardly separate, with many 'grey zones'. While it may be
more applicable in Jerusalem with its clear cut identity slots, there remains the
overriding question of how to legitimise a non-democratic system of governance in
the eyes of the constituents. This, however, may need to be the consequence of the
fact that without an arrangement for some form of consensual decision making
process in the regional bodies, each decision made on a simple majority basis could
become a spark of conflict or a situation whereby decision making would become
impossible. The need to arrive at consensual decision making may provide the
impetus for the sides to engage in trade-offs and balances to meet the required needs
of their own side.

7) The entire Brussels model is based on a very high level of tolerance and a political
culture of compromise and trust. In Jerusalem, there is little if any tolerance, no
culture of compromise and almost no trust. For that reason, any model which will be
developed in Jerusalem must take in account the high level of distrust and suspicion.
The Jerusalem model will have to over-compensate for the violent political culture
and for the lack of tolerance which permeates in all aspects of the Israeli-Palestinian
conflict. The Jerusalem model will have to be extremely explicit and elaborate in
order to provide more than enough guarantees for the protection of vital and
perceived interests of both sides.

5. Institutional elements of the Jerusalem Charter (based on the Brussels Model)

In Brussels there is no need to speak about separate sovereignties because all
citizens of Brussels are citizens of Belgium, however, in Brussels the concept of
autonomy relates to those competencies (or authorities, i.e. powers) which each side
exerts on its own. In Brussels, the Communities exert their autonomy over cultural issues (broadly defined, but universally understood and written down) whereas the sides possess shared powers in the Region aimed at the coherent management of the region as one undivided region.

Translated into the Jerusalem situation, the State of Israel and the State of Palestine would each possess the same competencies (or authorities, i.e. powers) over clearly defined aspects of political control within their own territory and under their own jurisdiction. This would most definitely include cultural affairs, education, welfare, most aspects of internal urban planning (within the separate communities and neighbourhoods), etc. In order to insure the coherent management of the city and its physical integrity, it would also be necessary to create a parallel kind of body to the Regional Council which exists in Brussels. The regional body would possess the competencies which are demanded to insure that infrastructures interlink, that transportation flows, that economic planning is conducted in co-operation, that tourism can be shared and developed together, etc. The issue of taxation would best be dealt with at a regional level as well, even though this may be extraordinarily complex. The Israeli side clearly has a wider and wealthier tax base. Most of the taxes of the city would be collected from the Israeli side. However, in the cause of peace-building and in answering the needs of the very under-developed part of Palestinian Jerusalem some mechanism of compensation and extra allocation of funds will most likely be required. It is unlikely that Jerusalem can exist in peace with such clearly unbalanced patterns or economic development as currently exists today.

6. The limitations

First and foremost, in order for the model to answer the challenge placed before it (two sovereigns in one physically undivided city):

1) Neither side can construct any kind of physical border within the city. Both sides will agree to the physical integrity of the city based upon agreed external boundaries and clearly defined and delineated internal sectors of jurisdiction. Israel will have jurisdiction over those areas where Israelis live and Palestine will have jurisdiction over those areas where Palestinians live. Because Jerusalem is an extremely segregated city, once the negotiations conclude as to the external boundaries of the city, designating internal jurisdictions should be less problematic.7

2) Both sides will agree that there will be no military presence in Jerusalem and that issues of security will be handled by the Police forces. Ideally, the model would suggest the creation of a joint police force for all of Jerusalem with Israeli policemen probably working within the area of Israeli jurisdiction and Palestinian policemen working with the areas of Palestinian jurisdiction. This option may not be possible, due to the lack of trust and the sensitivity of security issues. Therefore, another option would be the existence of separate police forces and special joint forces in charge of patrolling the areas where Israeli and Palestinian jurisdictions meet. There could also be joint mobile units or joint patrols of policemen as currently exist in the
Palestinian territories. The goal of the model should be to reach a maximal level of co-operation in security affairs as well as other affairs.

3) Criminal law need not be identical in both sides, however, it must be understood that criminal legal jurisdiction be decided by the location of where the alleged crime was committed and not by the identity of the alleged criminal. Both sides must understand and accept that their respective nationals may be brought to justice in the legal system of the other side. A mechanism must be established for appeals with regard to the determination of the authority which will possess the right to bring to justice. Similarly, there will need to be clear understandings based on accepted international law with regard to policies of rapid and expedient extradition of suspected criminals.

4) The two sides will be limited in their ability to change the external and internal boundaries of Jerusalem. Once agreed, neither side will have the ability to make changes in the map of Jerusalem without the agreement of the other side. The sides would be free to engage in accepted internal town planning for each area under its jurisdiction. They could agree upon the continuance of certain building codes regarding the use of building materials, such as Jerusalem stone facades as well as agreeing upon the height of buildings in key areas.

5) The two sides would have to agree upon strict environmental policies and standards and work together to uphold those standards. The environment knows no boundaries and neither side can afford for the possibility that environmental disasters will not only cause severe public health repercussions but also risk the possible demise of the treaty itself. Environmental issues and public health issues should also be dealt with at the regional level because of the importance of high quality control, efficient clean up of environmental accidents and overall pollution prevention.

7. The municipal governments

Two governments will be separately elected, the members of the council of the Israeli municipality by citizens of the State of Israel and the members of the Palestinian municipality by Palestinian citizens. Non-resident citizens will vote in accordance with the make up of the population of the area in which they live either for the Israeli or the Palestinian municipality.

Each municipality will have jurisdiction over its sector of the city on the basis of geographic delineations which will correspond to the demographic makeup of the area it serves.

8. Decentralisation or a multi-municipality system

Just as in the Brussels region where there are many separate municipalities which work together in a regional body, it is considered desirable for issues relating to local government to be devolved as far as possible on the citizens of Jerusalem, that is to the most local level possible. The purpose here is to bring about a high level of decentralisation of municipal government. The establishment of neighbourhood self-
management bodies on the lines of the minhalot (neighbourhood based, self-governing bodies) already existing in certain parts of the city today would give citizens the sense that they are actively involved in fashioning the future of their city and permit each neighbourhood to develop its own characteristics.

The decentralization of municipal government on the level of neighbourhoods is also likely to decrease the levels or possibilities of trans-national disputes. The experience of neighbourhood conflict resolution bodies from other parts of the world is quite valuable here. Bodies such as Community Boards in San Francisco which engage in community based and neighbour based conflict resolution (funded by the municipality) could be developed in Jerusalem as well. The role of these institutions would not be necessarily limited to the neighbourhoods that form the borders between Israeli and Palestinian Jerusalem, but for the resolution of internal Israeli-Israeli or internal Palestinian-Palestinian disputes as well.

The precise responsibilities given to those bodies, both the neighbourhood governing bodies and the conflict resolution bodies would be determined by the senior bodies active in the system of government eventually selected. It is recommended that the local bodies be given responsibility for neighbourhood based planning and zoning, cultural and extracurricular education and programs, and the planning of and use of public space. Additionally, the local neighbourhood bodies should have the right and the facilities to raise funds from the local population as well as from outside sources.

9. The regional structure

Joint planning commissions will be established to deal with areas of mutual concern. Members of the joint planning commissions will be appointed the respective municipal authorities and will have to find agreed upon solutions and proposals which they will reach through compromise. As mentioned above, there is a possibility that at some time in the future, these bodies could be elected by the public either separately on Israeli and Palestinian lines or by both sides together. This would depend on the degree to which real peace has been achieved in the future. As an incremental measure in the future it is not impossible of thinking that one day there could be one central municipality for all of Jerusalem in the future. This is of course projecting much further into the future. Today, this kind of suggestion looks utopian and far from reality.

The following areas will be of concern to the joint planning commissions:
1) Government of the Holy Places, religious sites and buildings. This commission will have as its members representatives of the various denominations as well as the Israeli and Palestinian representatives appointed by the municipalities.
2) Government of the Old City
3) Provision of infrastructure and especially road transport systems, communication networks, electricity grids, disposal of waste and water supply.
4) Taxation and development planning including projects designed to assist economic growth.
5) Development of tourism.
6) Initiation and supervision of archaeological research.
7) Planning of recreational areas and provision of open spaces open for all residents of the city and all visitors.

It is also suggested that a ‘Mayors' forum’ will be established to enhance cooperation between the two municipalities and provide in an informal setting opportunities discussion of issues which concern the city as a whole and the work of the joint planning committees. Issues that cannot be resolved in the joint planning committees shall be brought to the Mayor's forum for resolution. The mayors will then have to receive the support of the democratically elected municipal councils.

Conclusion

Models such as Brussels and perhaps even more important and significant models such as the European Union demand further analysis and understanding of how such developments can effect the future of international relations in other areas in a process of moving from conflict to reconciliation.

This paper attempted to lay the grounds for the beginning of the development of a concept of agreements between states which provides for mutual and parallel limitations of power, checks and balances and stronger guarantees for arriving at agreements on disputed issues and territories. The model itself can only be applied if both sides understand the limitations of sovereignty already existing in modern international law. If, from the outset, one or both sides have misconceptions regarding the extent of their sovereignty, then they are most likely being deceived by their own physical strength (or weakness). While in realpolitik 'might may seem to make right', this clearly will not allow for the creation of peace and stability. Therefore, when negotiations take place there is a built-in assumption that compromises will be reached on positions held by both sides. The concept of "trans-consentual constitutional law" may be useful in helping the sides to recognise that even when reaching painful compromises, there is a balance and parallel nature to that. Each sides compromises will be in some way, a mirror image of the compromises of the other side.

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Notes.

1 These points are summarized from the book *A Place Among the Nations* by Benjamin Netanyahu.

2 It should be pointed out that in international relations today there is no recognized Right to Wage War. States can legally defend themselves against attack, however; they do not possess a legal right to wage an aggressive war.

3 This refers to a constitutional law which needs a larger than simple majority for it to be amended. In Israel, a Basic Law requires a majority of 61 votes to be amended.

4 Public opinion research conducted by IPCRI in 1995 in both Israel and the Palestinian territories showed that the overwhelming majority of both Israelis and Palestinians (more than 70%) favor future options which leave Jerusalem as one open city. Likewise, only 3% of both publics favored an option of internationalizing the city under a third party rule such as the United Nations.

5 As stated above, this process could evolve gradually over time allowing for the adoption of developing agreements between the sides. It is not required that a full comprehensive treaty be reached before this proposed method be implemented. It is important as a measure of creating guarantees (as over compensation for lack of trust) and as a mean to create trust and confidence that a system of limitations, check and balances be developed and accepted as part of the peace process and peace building.

6 It is true that either side could unilaterally breach the treaty and withdraw from its binding clauses, as exists in any other situation in international relations. The concept of permanence is used to impose a stronger sense and understanding that both sides have taken considerable steps which voluntarily limit their sovereignty and because of that the possibility of breaching the agreement becomes more costly and painful.

7 This is assuming that the Palestinians will have little ability to gain jurisdiction over the Israeli areas which have been built in the Eastern part of the city since 1967. This assumption may be quite difficult for Palestinians to accept prior to negotiations, however, given the history of negotiations thus far, there is little reason to believe that the outcome will be different from what is here suggested.
THE CONCEPT OF SOVEREIGNTY UNDER INTERNATIONAL LAW
AND ITS RELEVANCE TO THE JERUSALEM QUESTION
- Part one: A concept in change -

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Introduction

The Israeli-Palestinian peace process was launched with the signing at Washington DC of the Declaration of Principles on Interim Self-Government Arrangements (the DOP). This historic document aimed at establishing a Palestinian Interim Self-Government Authority for the Palestinian people in the West Bank and the Gaza Strip - leading to a permanent settlement based on Security Council Resolutions 242 and 338. Negotiations on the permanent settlement (or ‘permanent status’) have now begun, and are to cover various issues agreed upon by the two sides, one of which is ‘Jerusalem’. The inclusion of Jerusalem as one of the permanent status issues signifies its importance to both sides - and the correlating difficulties expected to be involved in negotiating it.

One of the principal difficulties in negotiating in Jerusalem is the question of sovereignty. This question has indeed been at the core of the academic and political debate over the legal status of Jerusalem in international law. Similarly, it has been assumed that disagreement in the permanent status negotiations over Jerusalem ‘will encompass many thorny questions, e.g., matters related to sovereignty...’. It is clear, therefore, that the issue of sovereignty is a potential obstacle to a successful settlement of the Jerusalem question. In order to avoid the materialisation of that potential, the meaning and contents of that concept must be examined, especially where they relate to territory.

Consequently, this paper aims at examining the concept of sovereignty in international law. First it reviews its historical origins, and then it focuses on its current meaning by analysing some of the constituent elements of this doctrine and the changes that affected these elements, resulting in what may be described as the doctrine’s decline. The discussion then turns to examine another cause for the decline of sovereignty, namely, the doctrine of self-determination. The last part of this paper will evaluate that decline and its implication.

Part one of this paper will be followed a second, in which the territorial implications of the doctrine of sovereignty will be examined, in order to elucidate the relevance of this doctrinal discussion to the Jerusalem question. This relevance will then be presented, together with a review of the variety of existing models of sovereignty in different territories, for a solution of the very complex problem of Jerusalem necessitates, as we believe, examining all possible alternatives.
1. The provenance of sovereignty

The term ‘sovereignty’, which derives from the Latin supra and supremus, can be traced back to ancient times. It was already used by Aristotle to denote a supreme authority within a community. The modern concept of sovereignty, however, has its roots in medieval Europe. In order to liberate themselves from the Pope and the Emperor, territorial princes invoked this term. At the same time, these rulers used sovereignty to enhance their exclusive territorial jurisdiction against overlapping personal jurisdictions. The first conceptualisation of the doctrine came in 1576, when Jean Bodin wrote that sovereignty is ‘la puissance absolute et perpetuelle d'une Republique’. The puissance absolute according to Bodin, meant that, internally, a ruler had the totality of legislative powers to the extent of not being bound by the laws of his predecessors nor by his own laws and, externally, that in exercising public authority, the ruler was not by law subject to a higher secular authority. According to Bodin, sovereignty was limited by the laws of god, the laws of nature, and certain fundamental human laws. Bodin’s sovereignty was, essentially, an internal political theory.

The Peace of West Phalia in 1648 ‘started a process that substituted the independence of sovereign States for the unity of the Christian Empire led by the Holy Roman Emperor and the Pope’. Three years later, Hobbes’ Leviathan imported sovereignty on international level. Hobbes maintained that survival and peace of men could only be established, and the bellum omnium contra omnes could only be overcome, if men conferred all their individual powers upon one man or a group of men, thus creating the Leviathan, which has the totality of power. As the States (the Leviathans) have no other authority above them, no superior law or legal order can bind them and govern their relations. They are, according to Hobbes, in the ‘state of nature’, warring against each other.

This is a radical view of sovereignty, in that the sovereign is under no duty to obey others, and has the right to disregard even justice, the rights of its own subjects and those of other States. The drift towards viewing sovereignty an absolute concept was extended by Spinoza, Hegel and others. With the expansion of the newly-found form of political order, the secular State, and the replacement of medieval overlapping personal jurisdictions with an exclusive territorial jurisdiction of the State, sovereignty now meant ‘a state's general independence from and legal impermeability in relation to foreign powers, and the State's exclusive jurisdiction over the State's territory and inhabitants’. As a consequence, States became the principal subjects of international law.

2. The meaning of sovereignty

Today, sovereignty represents a status in international law, namely that of a ‘direct subject’ of international law. As such, States are independent and equal. Moreover, it means the State is independent, within its territorial jurisdiction, from the
executive legislative or judicial jurisdiction of a foreign State and from a foreign law -
barring public international law.\textsuperscript{17}

2.1. The consequences of sovereignty

In order to understand in full the modern concept of sovereignty, it is important
to identify the elements that comprise it, that are inherent in it (or viewed as such) and
are derived from it.\textsuperscript{18}

2.1.1. Sovereign equality

The 19th century classifications of States such as ‘fully civilised’, ‘semi-
civilized’, and ‘non-civilised’ did not survive: Article 2(1) of the Charter of the United
Nations pronounces that the United Nations will be ‘based on the principle of the
sovereign equality of all its members’ - i.e. “States”. This principle, which is
elaborated in detail in the United National General Assembly so-called ‘Friendly
Relations’ Declaration of 1970\textsuperscript{19}, means basically that States are juridically equal and
enjoy equal rights and duties in law; that States enjoy the rights inherent in full
sovereignty; that all States must respect their counterparts and that they are all equally
bound by international law.

2.1.2. Jus ad bellum: The right to wage war

Traditionally, the ‘liberte de guerre’ has been one of the most important
manifestations of sovereignty. Reinforced by the Hobbesian and Vattel’s concepts,
this doctrine was viewed as allowing States to wage war as of right.\textsuperscript{20} Sometimes
even where a \textit{justa causa} did not exist. Since the end of the 19th century, attempts
were made to impose limits on this doctrine. The Kellogg-Briand Pact of 1928
outlawed wars of aggression, thus giving rise to a new idea, the \textit{bellum legale}. In
1945, the Charter of the United Nations was signed and came into force; it imposed
on the member States a duty to settle international disputes by peaceful means\textsuperscript{21} and,
as a corollary, prohibited the use of force\textsuperscript{22}, except for the inherent right of an
individual or collective self-defence.\textsuperscript{23} This development represents the elimination
of the right of the State to wage war, and may thus be viewed as a very significant
limitation of what had previously been considered a central element of State
sovereignty.

2.1.3. Non-intervention

The concept of non-intervention in the domestic affairs of a state was
introduced into international law in the Peace of West Phalia (1648), which brought
to an end the legitimacy of intervention on religious grounds. During the following
century, this principle became recognised as an attribute of State sovereignty, yet it
was limited to a considerable extent in that interventions aimed at preserving the
European balance of power or arising under treaties were still considered legitimate.
The universal recognition accorded to this principle in the 19th century did not render it absolute: intervention was still practised by the European Empires of the day, principally on humanitarian grounds.\textsuperscript{24} The principle of non-intervention found explicit expression in the Covenant of the League of Nations\textsuperscript{25}, in that the Council was not authorised to deal with disputes concerning matters which, under international law, were solely within the domestic jurisdiction of States.\textsuperscript{26} By contrast, Article 2(4) of the United Nations Charter prohibited the United Nations from intervening 'in matters which are essentially within the domestic jurisdiction of any state... ', except where enforcement measures (in the context of threat to and breaches of the peace and acts of aggression are involved).\textsuperscript{27}

The Friendly Relations resolution\textsuperscript{28} provides a lucid presentation of the concept of non-intervention: it emphasises the prohibition on States to intervene, 'directly or indirectly, for any reason whatever, in the internal or external affairs of any other state,' and the correlating inalienable right of States to choose their political, economic, social and cultural systems without interference. In recent years, however, the principle of non-intervention has been fettered considerably by the evolvement of international humanitarian law and a system of international protection of human rights. According to Lapidoth, these developments 'touch at the very core of State sovereignty, namely, the exclusive right of a State to govern its own citizens according to its discretion'.\textsuperscript{29} A striking example the Security Council resolution 683\textsuperscript{30} authorised the aid operation to the Kurds in Northern Iraq despite the Iraqi objections.\textsuperscript{31} A similar encroachment into domestic affairs of a State may be emerging in the field of environmental protection.

2.2. The effect of change on the modern doctrine of sovereignty

Apart from the general exposition of the meaning of the concept of sovereignty dealt with above, the sovereign equality of States, the right of States to wage war and the prohibition on intervention in a States' affairs are generally viewed as the central elements or implications of State sovereignty. This is not to say that sovereignty has no other important consequences; among these, one may mention the principle that States are not compelled by law to take part in international adjudication\textsuperscript{32} and the presumption in favour of State competence.\textsuperscript{33} I have nevertheless chosen to focus on those three elements because they represent the areas in which the traditional view of sovereignty has undergone great change; the sovereign equality of States, according to Prof. Lapidoth 'has in fact disappeared due to the increasing interdependence of states'. Prof. Lapidoth further argues that 'one could doubt whether real equality existed in the past; today it certainly does not. In practice, the political, strategic and economic interdependence of States has considerably increased; the only country today, at the end of 1991, that could be considered to be to a large extent independent, is the United States'.\textsuperscript{34} As to the right of States to wage war, it is evidently beyond contest that it does not exist, except where self-defence is involved.

As a rule the use of force is prohibited and has now attained the status of a \textit{jus cogens}, a non-alterable norm of international law. Additionally, the mere act of
empowering the Security Council to determine the existence of 'threat to peace, breach of peace, or act of aggression' and to act upon such a determination in a legally binding manner constitutes a considerable, albeit voluntary, surrender of a very large portion of State sovereignty.  

It is manifest that the principle of non-intervention in the domestic affairs of States is also declining, due to an extension of its exceptions, notably the intervention on humanitarian grounds and possibly, environmental intervention. These and other factors have led many authors to question the appropriateness of the term 'sovereignty' and even the substantive relevance of the doctrine today.  

2.3. The doctrine of self-determination: another affront on sovereignty

Another relatively recent development affecting transition in the concept of sovereignty is the emergence of the doctrine of self-determination. While this doctrine is not, per se, within the province of the current discussion, it is worthwhile mentioning that, very broadly speaking, one important aspect of self-determination is the right of all 'peoples' to determine their own political status. Most components of this doctrine are ambiguous and are the subject of debate. Of particular controversy is the unresolved question of whether the right of self-determination entails a right to secede from an existing independent State, or does it apply only in the case of decolonisation. Those who wish to narrow the application of this doctrine to colonial situations rely on an argument that found expression in the Friendly Relations resolution. Following a general detailed recognition of the principle, the resolution states in the following terms:

'Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to that territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country. The exercise of the right to self-determination in non-colonial situations stands therefore in sharp contrast to the sovereignty of the State, at least where the population is heterogeneous.'

2.4. Implications of the decline of sovereignty

As noted above, the transition the concept of sovereignty has undergone and the inherent conceptual difficulties that surrounds it, have led authors to criticise its' appropriateness and relevance as a doctrine of international law; for example, it has been suggested that it is 'at the same time uncertain in context, inexact from the point of view of legal technique, contrary to social reality, and , lastly, dangerous by virtue
of the practical consequences it is susceptible of setting in motion'. Another important consequence of the decline of sovereignty is that a certain debate concerning the nature of sovereignty became, to a very large extent, the subject of consensus in jurisprudence, practice and writings. This debate relates to subjection of State sovereignty to international law. In the past, this has been a central polemic: Bodin's exposition of sovereignty recognised that it was subject to divine and natural law as well as to certain fundamental human laws. By contrast, the Hobbesian Leviathan, subjected to no other authority, was free from the fetters of law and justice. This view of sovereignty undermines and negates the very existence of international law, and so it has in the past been used to justify totalitarianism and expansionism.

Today, however, it is clear that State sovereignty is essentially a legal status within and subjected to public international law; reliance on it will not absolve a State from the observation of its general international law norms nor from its treaty obligations. This clearly represents a restriction on the freedom of the State, hence the exercise of its sovereignty; but this does not mean that the legal status of a State is impaired by these restrictions. Another aspect of this debate concerning the absolute or unlimitable character of sovereignty, has also been clarified by the changes in the concept of sovereignty. Apart from the limitations on a State's sovereignty imposed by international law (general and conventional), other types of limitations on it may and do exist.

Although these limitations are the subject of the second part in this paper, it may prove beneficial to mention just a few; for example, it is argued that at least internally (that is, within the State), the notion of (absolute) sovereignty has loosened due to the rise of democracy and federalism. Due to the structure of power in some democracies, and, especially in federal States, it became very difficult, if not impossible, to identify the 'sole repository of sovereignty'. Also, a certain degree of sovereignty may vest in tribal people. In that respect, it is important to note that a whole range of terms has been developed to describe different models of sovereignty, such as "dual sovereignty", "residual sovereignty", "sovereignty-association", "divided sovereignty", "partial sovereignty", "shared sovereignty", "scattered sovereignty", "joint sovereignty", and "pluralistic sovereignty". In Prof. Lapidoth's opinion, '[t]hese developments seem to confirm that sovereignty is not indivisible, and that two or several authorities may have limited, relative, differential or functional sovereignty over certain areas, groups or resources'.

- Part two: Types and models of sovereignty arrangements -

Introduction

Based on the assumption that the question of sovereignty in connection with Jerusalem will very likely constitute a major area of disagreement in any negotiation on the future status of the city, the previous chapter sought to examine the concept of sovereignty in international law, its meaning and contents, with a special focus on the
developments that have taken place in regard to its constituent elements. These developments have led us to observe that sovereignty is not - and one is tempted to use the word 'inherently' here - unlimitable and absolute, for it is subject to various limitations beyond those implied in the subjection of the State to general international law and to its own contractual undertakings. Sovereignty can now be described as a status in international law - and one that is enjoyed exclusively by States.

It is still used, however, in another sense; namely in that of describing the sum of public political power in a State. Sovereignty may be said to have undergone a change in this sense, too, due to the evolvement of complex political structures. In past times, a prince was the secular ruler, and the sum of his powers could perhaps be described as 'sovereign powers'. Nowadays, organised political power in democratic States vests in different branches of government - based on the notion of separation of powers - and in different bodies within each branch. And even though one may assert that within such structures, a sole source of authority may still be ascertained (e.g. the Queen in Parliament, as in the British case, the People, as in the United States Constitution or the Knesset, in Israel) by using delegation and similar notions, such an exercise is often reduced to abstractism and factitiousness. This change in the nature of sovereignty is even more manifest in complex political structures such as in federal States: 'A federal state is a union of several sovereign states, which has organs of its own and is invested with the power, not only over the member states, but also over their citizens, [...] based [...] on an international treaty of the member states, and [...] on a subsequently accepted constitution of the federal state.' As a consequence, in a federal State, 'sovereignty is divided between the federal state on the one hand, and, on the other, the member states'. The member States 'possess supreme authority and independence with regard to part of the functions of a state, whereas with regard to other parts they are under the authority of another state'.

These developments may necessitate a change of terminology, as some have suggested, but in practice and in literature, the term sovereignty still prevails. Sovereignty, moreover, is traditionally linked or related to territory: absolute or limited political power can only be exercised in a given portion of the earth. The validity of this relation today need be examined, and so does its extent. Sovereignty may now not only be divided (or even fragmented) among different repositories within a State. Could it be that sovereignty may also be divided and allocated between or among States, or even outside the State (in relation to a part or the whole of its territory) apart from the limitation represented by the subjection of the State to international and treaty law? The oft-quoted passages by the former US Secretary of State, George Schultz, answers this question in affirmatively: 'the very borders of nations are no longer under genuine sovereign control' resulting in 'a wide array of shifting sovereign arrangements'. Another answer may be provided by the following example: the accession of a State to an international organisation involves its consent to abide by certain behaviour. Certain powers and authorities may be given to the organisation. These powers are often curtailed from the State and transferred to the organisation. Often, the State can no longer exercise these powers except to the extent it is allowed to do so under the organisation constitution. The State may be
said to have surrendered these sovereign powers to the organisation. Obvious examples are defence pacts and, even more so the United Nations Charter, under which the Member States of the United Nations may be obliged to abide by the dictates of the Security Council, in certain prescribed circumstances. It may even be compelled by force to abide. The fact that the accession to the organisation involves the consent of the acceding State does not undermine the fact that sovereignty has been transferred.

First, some constitutions of international organisations do not prescribe a procedure for withdrawal of membership, nor is it clear whether such withdrawal is permitted under general international law as of right, the transfer could then be perpetual, at least in notion. Second, it may be that the transfer of certain powers is, by their very nature, irreversible, as we shall see below.

This chapter therefore seeks to survey existing types of divisions of 'sovereignty', used here in the sense describing the totality of political power in a State. The end-product will be a delineation of the range of potential models of sovereignty. This so-called 'map' will enable, it is hoped, the making of any proposal on the future of the city, compatible with international law while still allowing for flexibility inherent in the ability to 'pick and choose' attractive elements from the different models. After the completion of this survey, we shall look into the division of power in a particular complex structure of power division: the European Communities. Albeit a unique creation and very different from the case of one city. The title to which is in contention, the question of sovereignty in the Communities is very illuminating in that it demonstrates an unorthodox use of outmoded concepts to create original structures for the purpose of attaining novel political goals, both in treaty-making and in judicial interpretation. This kind of creativity might be, after all, exactly what the Jerusalem question requires.

1. Models of sovereignty arrangements

1.1. Jurisdiction distinguished

Before reviewing different types and models of sovereignty, a few international law conceptual mines must be cleared. The first is the distinction between jurisdiction and sovereignty. These two related concepts are often blurred, so that the distinction needs be drawn in order to avoid needless confusion. Jurisdiction of the State is described by Oxman as referring, in its broad sense, to 'its lawful power to act and hence to its power to decide whether and, if so, how to act.' More specifically, the term jurisdiction is used to describe the lawful power of the State to define and enforce the rights and duties, and control the conduct of natural and juridical persons.

A State exercises its jurisdiction by establishing rules (sometimes called the exercise of legislative jurisdiction or prescriptive competence), by establishing procedures for identifying breaches of the rules and the precise consequences thereof (sometimes called judicial jurisdiction or adjudicative competence), and by forcibly imposing consequences such as loss of liberty or property for breaches or, pending adjudication,
alleged breaches of the rules (sometimes called enforcement jurisdiction or competence). 47

Similarly, Oppenheim's International Law treats jurisdiction as concerning 'essentially the extent of each state's right to regulate conduct or the consequences of events'. 48 International law 'determines the permissible limits of a state's jurisdiction'. 49 The difference between the notions of sovereignty and jurisdiction, according to Oppenheim's International Law, is that:

'Jurisdiction is not co-extensive with state sovereignty, although the relationship between them is close: a state's 'title to exercise jurisdiction rests in its sovereignty'. That jurisdiction is based on sovereignty does not mean that each state has in international law a sovereign right to exercise jurisdiction in whatever circumstances it chooses. The exercise of jurisdiction may impinge upon the interests of other states. What one state may see as the exercise of its sovereign rights of jurisdiction another state may see as an infringement of its own sovereignty rights of territorial or personal authority.' 50

1.2. State territory

The second concept requiring elucidation is that of State territory. 'Defined territory' is one of the accepted indicia of statehood. 51 So that a State without territory is a legal impossibility. The importance of State territory, as per Oppenheim's International Law, is that 'it is the space within which the state exercises its supreme, and normally exclusive, authority'. 52 Different theories have been proffered to explain the legal function of State territory; whereas it seems that there is a general consensus; that it is more than a mere physical reality, its nature as a concept of public international law has been described by different schools of thought as 1) an object of international law, one over which the State, as a subject of international law, exercises dominium. As such, territory is no more than a right in public law, analogous to private law ownership; 2) a subject in the sense that it is the spatial element of the State being, where it exercises exclusive imperium over the persons therein; or 3) as the jurisdictional theory advocates, State territory is a functional concept, in that it is the sphere of delimitation of the state's jurisdiction i.e. a mere spatial limit of the powers of the State, plus (at list according to some ) territorial supremacy erga omnes. 53

In reality, all three doctrines embody part of the truth. 54 What is important for the purposes of the present discussion, is that international law, to a very wide extent, accords protection to a State's territory. The Permanent Court of International Justice pronounced in 1927 that: 'the first and foremost restriction imposed by international law upon a State is that - failing the existence of a permissive rule to the contrary -it may not exercise its power in any form in the territory of another State.' 55 With the subsequent illegalisation of war, that protection was given more concrete expression, manifest in the notion of the sovereignty equality of States 56 and in Article 2(4) of the United Nations Charter, which provides that: 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity
or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.\textsuperscript{57} Of particular interest is the possible implied linkage made between the territorial integrity on the one hand, and the political independence of a State, on the other.

1.3. Condominium - a conjoint exercise of territory

Condominium, a concept originating in Roman and civil law, is also referred to in the literature as co-imperium, joint sovereignty, common sovereignty or co-sovereignty. It involves ‘two or more States exercising sovereignty conjointly over a territory’,\textsuperscript{58} or, as Schneider phrases: ‘an association of sovereignties over a single territory’.\textsuperscript{59} Title to the territory in question vests in the States forming that association collectively, at least in theory. A conjoint exercise of sovereignty over territory is based on parity, according to the specific arrangements agreed by the States involved.\textsuperscript{60} In practical terms, the States involved either establish joint institutions or simply maintain parallel administrations.\textsuperscript{61} It seems that this arrangement has in some cases used as a provisional measure, under which non of the States involved was to exercise individual control, pending a permanent solution. As such, some have lasted for long periods.\textsuperscript{62} The employment of this provisional arrangement after World War I was interpreted as an indication of its irrelevance in modern age.\textsuperscript{63} Even if this statement is correct, there is nothing in international law to prevent the creation of such an arrangement in the future.

It is true, nevertheless, that the relatively small number of cases of condominia that ever existed makes it impossible to speak of ‘an institution of condominium’ in international law on one hand, or to derive specific general legal rules concerning the creation, nature, operation and termination of such an institution. Certain ‘basic notions’, however, have been identified by Schneider. According to one view, Condominium can only be created by an agreement, although it seems there is no need for an explicit use of any term.\textsuperscript{64} Examples of Condominiums are those of Schleswig-Holstein and Lauenburg under Austria and Prussia in the 19th century,\textsuperscript{65} the British-Egyptian Condominium over Sudan,\textsuperscript{66} and the New Hebrides (since 1980, the independent Republic of Vanuatu) under Great Britain and France.\textsuperscript{67} Finally, it should be mentioned that Condominium arrangements have also been applied to water resources, bays and gulfs.\textsuperscript{68}

1.4. “Internationalisation”

The idea of “internationalisation” has been explored in depth specifically with regard to Jerusalem. United Nations General Assembly Resolution 181(II) on the Future Government of Palestine of November 29, 1947, (the so-called Partition Resolution)\textsuperscript{69}, which was based on the majority recommendations of the United Nations Special Committee on Palestine (UNSCOP) report,\textsuperscript{70} included, inter-alia, the following clause: ‘The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations.
The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations.\(^7\) The United Nations, the Vatican (only to an extent) as well as many States still base their policy on the question of Jerusalem on this provision. In concept, the term "internationalisation" describes: 'a situation where a territory ... within the territory of one State was brought under the protection or control of another State or of several States ... [so that] the territorial sovereignty of a specific State is limited in favour of another State, a larger group of States or the community of States as a whole.'\(^72\)

According to Lapidoth, Housen-Couriel and Hirsch, "internationalisation" is characterized by three fundamental features.\(^73\) First, the abolition, suspension or limitation of the territorial State; second, the establishment of a regime in favour of several or all States - albeit that the benefit may accrue to one State alone: Wolfrum thus maintains that 'such benefit must be founded on the common interest of a larger group of States';\(^74\) and third, 'the creation of an institutional international framework, i.e. international administration'.\(^75\) The international administration may be direct or indirect; it may be exercised by an international organisation or by a State or a group of States, but in all circumstances, the administrating body is 'acting on behalf of the community of States'.\(^76\)

This, according to Wolfrum, is the source for distinguishing between "internationalisation" and "condominium," in the former, the limitation of the Territory State's territorial sovereignty is based on serving the interest of the community of States as a whole, while in the latter, that limitation on each side's territory sovereignty is in favour of the other co-sovereign.\(^77\) Another not less fundamental ground for distinction is the effect each regime has on the sovereignty in the territory in question. It has already been noted that the territorial sovereignty of the State whose territory was subjected to internationalisation may be abolished - in which case the internationalisation may be said to be territorial - or that it may be only limited - in which case the term used is functional internationalisation.

Sovereignty in the internationalised territory, in the case of a territorial internationalisation, is transferred to the organ constituted by the internationalising instrument and it seems that international law applies directly to the territory in question. For example, sovereignty in the Saar, which was internationalised from 1919 to 1935, vested in the League of Nations.\(^78\) By contrast, in the case of functional internationalisation, only one or several aspects of the territorial sovereignty of the State in which internationalisation takes place are limited. The extent of the limitations determines the extent to which the State's sovereignty is restricted; essentially, sovereignty remains within the original State, although in practical terms it may be only minimal or nominal. A relatively new type of functional internationalisation regime entrusts States rather than international organisations with certain functions which do not emanate from these State's territorial sovereignty.
1.5. Consent administration

Different is the case where one State exercises sovereignty in a territory the title to which vests in another State with the consent of the latter. This type of regime differs from internationalisation in that the basis for the arrangement is not the interest of the community of States as a whole, but the interest of the States concerned alone.

It is doubtful whether there is in international law an institution of what we choose to term here 'consented administration'. For this reason, any rules result from the application of an individual case. The consensual basis of this regime, however, simplifies its analysis: all matters related to the arrangement are supposedly governed by the terms of the instrument between the interested States; still, some practical and conceptual unclari ties may evolve (and have evolved), for international agreements don't always explicate all ambiguities and even where they do, discrepancies still exist. With regard to the question of sovereignty in the administered territory, the Permanent Court of International Justice recognised that the sovereignty of a State over a territory administered by another with its consent is not impaired.70

Oppenheim's International Law expresses the view that in cases of administered territory 'cession of territory had for all practical purposes taken place although in law they still belonged to the former owner-state'.80 This exposition seems inaccurate: first, cession involves a transfer of title, whereas in our case the title to the administered territory is, by definition, unaffected. Second, because the title is unchanged, one has to assume that in the absence of an express provision to the contrary in the legal instrument, which sanctions the administration arrangements, the owner-State retains, apart from the title and from residual authority, some remainder interest in the exercise of sovereignty in that territory. In other words, there must be a presumption of limited duration. Third, as Oppenheim's International Law acknowledges, there may be legal consequences for the owner-State even when its sovereignty is, so to speak, 'nominal'.81 For these reasons, the use of the phrase 'former owner-state' in the above-quoted paragraph is conceptually misleading. Cases of consented-administration were the formerly Turkish island of Cyprus which under British administration from 1878 to 1914 and, arguably Bosnia and Herzegovina under Austro-Hungarian administration from 1878 to 1908.82

1.6. Consent administration in perpetuity

This case involves a grant by one State of the use, occupation and control of part of its territory, and is distinguished from the former case in that the grant is not only perpetual, but is also made 'to the exclusion of the exercise of any sovereignty rights over that territory by the grantor'. In the case of the Panama Canal, Panama transferred to the United States a strip of territory ten miles wide, for uses related to the Panama Canal, in perpetuity; Panama 'retained in law the property in the territory, even whilst only the grantee exercised sovereignty there'.83 Formalism precludes the treatment of this scenario as a case of a virtual cession, too, due to the consensual basis of the regime, to the express retention of title and to the prospect that the legal
source of the consent i.e. the international treaty establishing the regime may be validly terminated or suspended under the terms of the treaty itself (if it so provides) or under the general law of treaties or other international law rules which might affect the validity or operation of international agreements.

1.7. Leases

Rumpf defines an international law lease - sometimes also referred to as a pledge - by specific comparison to the private law institution: ‘A lease of territory is an agreement by which a subject of international law - as a rule a sovereign State - agrees to allow another subject of international law to have the use of a part of the lessor’s territory through the exercise of some or all sovereign rights including the lessee’s own administration, and the usufruct of the territory for a certain time for a certain payment.’

A lease may be the subject of the internal private law of the lessor State, but the type the present paper is concerned with, has another definitional element in that it is governed by international law. There is no need to employ any specific term in order to create a lease arrangement, and it seems that ‘terms vary considerably’. What is required, is that the exercise of sovereign rights in the territory in question be assigned or transferred to another State, for some kind of repayment. The mere lease of land by one State to another must be distinguished, despite its identical name, for it involves no transfer of the exercise of sovereignty. Leases are commonly limited in time and the lessor State retains its title to the leased territory, and is usually made the holder of a reversionary interest - i.e. there is an express provision for the ‘restoration’ of the lease territory to the ‘full sovereignty’ of the owner-State at the expiry of the lease period. In the absence of a time limit, the territory reverts to the lessor, or that it only reverts where the purpose and object of the lease agreement have been fulfilled, or that, according to Rumpf, negotiations may take place between the lessor and the lessee upon the latter’s request. A lease may be rescinded or abrogated, upon which occasion the territory also reverts back to the owner-State.

1.8. Federal states

Essentially, a federal State may be defined as a union of States in which both the federation and the member States embody the constitutive elements of a State: territory, citizens, and legislative, executive and judicial power over them. State authority is divided between the federation, on the one side, and the member States on the other, both of which possess certain assigned competencies and functions.

It has already been noted that ‘a federal state is a union of several sovereign states which has organs of its own and is invested with the power, not only over the member states, but also over their citizens ..., based ... on an international treaty of the member states, and ... on a subsequently accepted constitution of the federal state’, and that sovereignty in a federal State ‘is divided between a federal state and its
member states'. The modalities of division are usually determined by the federal constitution.

1.9. Mandated and trusteeship territory

The question of sovereignty in mandate and trusteeship territories involves profound conceptual difficulties; as these two arrangements are very substantially different from any arrangements that could be applied to Jerusalem, even to a limited extent, the current survey will not discuss them in detail. It suffices to say that in these cases, the mandatory state, or the trustee state, exercised most of the attributes of sovereignty over territory that was not its own. Moreover, the United Nations Charter provided for the possibility of joint sovereignty by several states - a case of joint exercise of divided sovereignty.

2. Types of sovereignty structures

Having presented some models of sovereignty arrangements, the discussion will now turn to analyse the types of sovereignty structures embodied in the regimes presented above and in a few other arrangements. First, however, the concepts of "functional sovereignty" and domains "res communis" merit an inspection in depth because they represent innovations. Both are or can be viewed as new types of sovereignty structures.

2.1. Functional sovereignty and Res Communis regimes

In 1975, Riphagen identified two possible techniques in the international system. The first, 'old technique of international law' was based on division of the world among sovereign states, and creates a network of mutual rights and obligations inter se. The second, opposite technique, of 'a sovereign super-State' was, in his opinion, 'clearly unrealistic'. But Riphagen also discerned a third, intermediary technique which involves splitting-up the concept of sovereignty, and which therefore requires some creative imagination in the legal field. What is usually meant by 'functional sovereignty' is a regime in which States, despite the absence of a title to certain territorial domain, enjoy 'sovereign rights' for a particular function or purpose. The examples usually cited in this respect are the recent developments in the law of the sea; since the early 1960's, technological development made the exploitation of the seabed feasible, resulting in the legal developments in the United Nations Convention on the Law of the Sea, which created new maritime regimes. Coastal States were made, for example, entitled to an 'exclusive economic zone' of 200 miles width, within which they enjoy sovereign rights 'for the purpose of exploring and exploiting, conserving and managing the natural resources'. Similar arrangements were made in relation of the rights of littoral States on the continental shelf. A debate exists as to the whether 'functional sovereignty' arrangements are really devoid of a territorial character which makes them, if present, very close in content to full and permanent...
sovereignty. Still, this innovative concept presents - at least in theory - a clear model of a new type - not of division but rather an assignment - of sovereignty.

Another relatively recent development in international law is the designation of various areas or domains as common to the international community and their placement outside the territorial sovereignty of States. Such is the notion of the freedom of the high seas: the idea that the sea was inherently free from the sovereignty of any State predates Grotius. Practice, however, tended at times to support claims of maritime sovereignty of Maritime Empires. General recognition of the freedom of the open sea developed in the 18th and 19th centuries. The principle was codified in the 1958 Geneva Convention on the High Seas. Article 2 of that Convention read: ‘The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal States:

1) Freedom of navigation;
2) Freedom of fishing;
3) Freedom to lay submarine cables and pipelines;
4) Freedom to fly over the high seas.

These freedoms, and others which are recognised by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas. The term 'high seas' was defined in Article 1 of the Convention as meaning 'all parts of the sea that are not included in the territorial sea or in the internal waters of a State.' The freedom of the high sea is reiterated in Article 87 of the 1982 Convention. This concept then expresses the notion that the high sea is common to all States, and that, by that reason, it cannot be the subject of the territorial sovereignty of any State. No State can therefore acquire parts of the sea by occupation, nor can it exercise its legislative, judicial or executive authority therein. More explicit phrasing made the Sea-Bed and its resources 'the common heritage of mankind'. Similar res communis arrangements apply to Antarctica and Outer-Space.

Many view these arrangements as modern examples of internationalisation, mainly because the underlying premise in both cases is indeed the benefiting of the community as a whole. In the case of 'traditional' internationalisation, however, there seems to be the opinion that the benefit may accrue in some cases to 'larger groups of States' rather than to the whole community. Another reason for treating the res communis regimes as a distinct category is that the domains in relation to which they apply were not originally part of the territory of any State (though claims to that effect have certainly been made in the past) - they are the common heritage of mankind by virtue of an inherent nature, and, for that reason, they are less transient in nature in that they do not depend on political and social dynamics in a given territory.

Additionally, sovereignty in territorial internationalisation vests in a State, a group of States or in an international organisation - depending on who administers the territory in question, as laid down by the constituent instrument. By contrast, sovereignty in the new type regimes can be either non-existent in that it accrues to
none, or it may be vested in all States collectively or communally. In the latter case, there seems to be no practical meaning of sovereignty - and perhaps no theoretical meaning, too, for there can be no collective exercise of territorial sovereignty rights as we understand them today. It may be, therefore, that the concept of sovereignty is simply inapplicable to these res communis regimes. That is not to say, however, that these arrangements cannot be interpreted or applied by reference to principles governing the operation of orthodox internationalisation regime when due regard is given to the inherent difference between these two types of regimes.

2.2. National and residual sovereignty, and 'sovereignty in abeyance' - a suspension of the exercise of sovereign rights

In this model of sovereignty, one State allows or has the exercise of its sovereignty rights used by other for a duration. Throughout this period, however, it retains title to the territory in question, though it may not amount to much in practical terms. Sovereignty has been said to be held, therefore, in abeyance. The original State also retains residual authority, if any exists, in relation to the territory, plus the reversionary interest which materialises at the lapse of the period of suspension. This model can be used to explain some of the sovereignty arrangements described above; the lease institution is a clear paradigm of the operation of this model. It is typified by the additional element of payment for the said suspension. It also applies in the case of consented administration which, in abstract terms may be described as a (limited?) type of lease without payment. It is also compatible with the probably sui generis case of the perpetual arrangement in relation to the Panama canal, except that the element of reversion is, to say the least, problematic.

This model does not apply, however, to internationalisation, for this arrangement usually does involve the transfer of sovereignty rather than the exercise of rights resulting therefrom.

2.3. Sovereignty divided horizontally

As already established, sovereignty may be divided between different repositories. In the case of condominium, sovereignty is divided in parem between two or more States. The terms used to describe these States (joint sovereigns, co-sovereigns and the like) evidence this horizontal division.

2.4. Sovereignty divided vertically

Sovereignty may also be divided vertically: as much as that within a State public power is structured hierarchical, so can sovereign rights be divided in an international regime. One regime which can incorporate such a division is autonomy. The term autonomy itself has different meanings and covers more than one legal notion; but for the purpose of this paper alone we may treat autonomous territories as State territories, usually having ethnic or cultural distinction. They were granted internal administration of a certain extent without seceding from the State.
This working definition demonstrates the vertical nature of division of sovereignty powers between the State and its subordinate, irrespective of the question of the status of that subordinate in international law. Another, more complex example of a vertical division is the federated State: it may be recalled that 'State authority is divided between the federation, on the one side, and the member States on the other, both of which possess certain assigned competencies and functions.'\textsuperscript{110} The fact that this division can also be described as 'functional' or that it has, to an extent, a 'horizontal' component (in that the member States may have parallel competencies), does not vitiate the vertical element of the federation-member States structure. The federated model may still be described as a complex model of sovereignty structure.

2.5. Implications

This section of the present paper dealt with different shapes in which sovereignty - in the sense of the term that describes State power and authority - has been or still is taking place. No general conclusions can be made from such an exercise, yet it is still possible to observe that 'sovereignty structures' are dynamic in nature, in that they shift and alter over time to accommodate political needs of the day. This process has by no means come to an end: even today, new models of sovereignty structures develop and take new shapes. The allegedly rigid territory sovereignty turns out to have, after all, a considerable degree of flexibility. Moreover, this flexibility allows for the integration of some of the various types of divisions of sovereignty so as to create innovative regimes capable of accommodating conflicts to which existing paradigms are not satisfactorily applicable for objective and subjective reasons alike.

3. Sovereignty in the European Communities

The title 'sovereignty in the European Communities' can cover a wide range of discussions. It could, for example, seek to establish in whom sovereignty in the political structure of the Communities rests, or it could deal with the positions of the Member States of the Communities with regard to their individual sovereignties. It could refer to the popular discussion of whether or not the Community constitutes a type of a federation. Another exercise could involve the describing of the structure of powers in every field in the Communities to the end result of determining the exact structure of competence - and hence - of sovereignty. Such an exercise will involve the recital of every legal arrangement in every domain covered by Community Law, a lengthy (and no doubt, boring) task, and one that inevitably takes much more space, time and funds than those allocated to this paper. But it is also questionable whether such a gigantic undertaking would serve the purposes determined for this essay; these purposes comprised of the identification of the character of the novelties presented by the treatment of the issue of sovereignty in the legal structure of the European Communities, so that if and when the times comes to draft a legal text embodying a proposal on the future of Jerusalem which incorporates lessons learnt from the
Brussels model, use can be made, where appropriate, of these novelties. This purpose can be achieved through studying the principles pertaining to sovereignty in the legal regime of the European Communities.

The natural starting point in any discussion on the question of the Communities' legal regime is for the author to restate that the provenance of that regime is international law: the legal instruments which established the three Communities were signed as international treaties between sovereign States, and so were many of the more important subsequent documents. The Community Court, however, have from the outset viewed the Community legal order as a *sui generis* regime in international law. While the retention by Community Law of some 'international' features is acknowledged, it is often professed, so that now it seems to be accepted, that Community Law has matured to include a Community constitutional law, which term is used 'to identify ... the special features of the Community legal order and institutions'.

The existence of Community constitutional law emanates, according to Obradovic, from several sources. The first is the constitutional nature of the establishing treaties. The second is the constitutional nature of the activities of the European Court of Justice (ECJ). The third is the doctrine of 'divided sovereignty', defined by that author as an approach under which sovereignty 'is seen as something divisible in the meaning that a partial transfer of national sovereignty to the Community is feasible'.

At the core of the constitutional law of the Community there are two fundamental principles which were developed by the ECJ based on its liberal functional and teleological interpretation of the Treaty of Rome: direct effect and applicability of Community Law in the national legal systems of the Member States, and the supremacy of Community Law over national laws of the Member States. These two doctrines also constitute the foundation for the role of sovereignty in the Community legal order.

3.1. "Direct effect" or "direct applicability"

Ordinarily, the effect in domestic law of a State of international agreements to which it is a Party is determined by its constitution or constitution-like arrangements. A State approach to international law can be either monist or dualist. The dualist school views international law as a distinct and separate system which, ipso facto, has no impact on the domestic or municipal law. In order for an international agreement to be effective within a dualist State, some act transforming the agreement or its contents into the domestic system is required. This is usually done by a legislative act, often referred to as "transforming" or "incorporating" act. Without such an act, the State would be bound by a treaty on the international plane, yet the treaty will have no effect within its the State. Such action is not required under the dualist approach which views the domestic and international law as parts of a single legal system. As the treaties establishing the Community are international treaties, they could not confer upon individuals in the dualist Member States rights and duties which are
enforceable in the municipal courts. Moreover, the EC treaties do not make express provision as to the general effect they will have in the domestic systems of the Member States, so there was no reason to assume that these treaties will in any way differ from any other treaties establishing international organisations.

The ECJ, however, sought to foster European integration, and so aimed at making 'a constitutional framework for a federal type structure in Europe'. In the case of Van Gend en Loos V. Nederlandse Administratie der Belastingen, the Court ruled on the basis of the 'the spirit, the general scheme and the wording of [the Treaty of Rome] provisions', that Community law can be directly effective in the legal systems of the Member States. The Court held:

'The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty, which refers not only to governments but also to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens....

The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.

In practical terms, the result was that individuals could enforce Community law in national courts. In a wider sense, this judgement meant that one of the principal attributes of State sovereignty was relinquished by the Member States in favour of the Community: the State's exclusive power within its own territory. In that respect, Smith, whose paper focuses on the 'supranational' nature of Community law (being distinct from the orthodox 'intergovernmental' nature of treaties establishing international organisations), rightly maintains that '[t]he fact that important parts of EU market regulations apply directly as part of the domestic law of member states without having to be accepted by competent, national authorities, is one indication of the supranational characteristics of European integration'.

3.2. The supremacy of community law

To an extent, the sovereignty of the Member States could have been preserved, nonetheless, if the national law was to have superior authority over directly applicable Community law within their domestic legal systems, for the elimination of the need for transformation of Community law does not mean that as between Community and the
domestic law, the former prevails. The Treaties are silent on this point. The Court, however, was aware that its ruling in the van Gend landmark was in itself insufficient for ensuring not only the uniform application of Community law in the national courts of the Member States but also its effectiveness. The problem did not arise in the van Gend case as the Dutch constitution accords supremacy to all forms of international law. Dictum, the Court in that case noted that Community law is intended to confer rights and obligations upon individuals ‘independently of the legislation of Member States’.

The Court seized the opportunity to complete presenting his vision of the European constitution in the case of Costa v. ENEL, which involved the question of the validity of an Italian legislation, which was subsequent to the Treaty of Rome. The Court took the view that ‘[b]y creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane, and, more particularly, real powers stemming from the limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereignty rights, albeit within limited fields, and have thus created a body of law that binds both their nationals and themselves. The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on the basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system ….’ The Court thus concluded that: ‘It follows […] that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty, carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of Community cannot prevail. These pronouncements clearly represent a departure from recognised international law concepts; moreover, they represent, together with the ECJ’s rational in Van Gend, a clear declaration of pro-integration policy the pursuance of which was based on unorthodox purposive tools of judicial interpretation. The Court thus laid the foundation for ‘constitutionalising’ the Treaty by means of making it different from ordinary international agreements of its kind, which suffer from the lack of efficacious enforcement mechanisms by States and individuals alike. Without these developments, the Community ‘would have, in the course of time, … degenerated into a traditional international organisation, limited to inter-state relations’. Subsequent jurisprudence of the ECJ provided further legal grounds in support of these two doctrines and developed them.'
3.3. Divided sovereignty

According to Obradovic, Community constitutional law 'refers to a new notion of sovereignty consistent with divisibility' which, by that reason, 'is not based on the traditional view of sovereignty developed by Bodin, Hobbes, Rousseau and Hegel ...'. This new notion surmises that sovereignty, rather than being merely delegated, can be limited, shared or partially transferred to another body 'without being lost'. Sovereignty is thus seen as a 'bundle of powers' and is therefore inherently divisible; the Member States and the Community can be both viewed sovereign - seemingly each within its competence. As evidenced from the above citations from the Van Gend and Costa v. ENEL, the ECJ acknowledges that an irreversible transfer has taken place and, by implication, that sovereignty is divisible. Nevertheless, others speak of 'pooled sovereignty', implying that sovereignty was not 'transferred' in the sense of assignment or surrender, and that it was rather made to be held collectively by an association of States.

In any event, it is clear that the self-imposed limitation undertaken by the Member States is restricted to some areas, and that the institutions of the Community enjoy sovereignty only in those fields which are within their competencies, and for the purposes for which they were established. They cannot, for that reason, expand their own competence without this being sanctioned by the Member States. According to Obradovic, the doctrine of divided sovereignty does not, therefore, involve 'the complete transfer of national sovereignty to a central body'. Sovereignty, according to this analysis, still vests in the Member States, only that it is exercised collectively for their mutual benefit (it must be noted, though, that there is support for the view that a loss of sovereign rights did occur). From a jurisprudential or constitutional point of view, that doctrine may seem obscure or inadequate; from the point of view of our discussion, however, this doctrine may be seen as testifying the flexibility (and, no doubt, doctrinal intricacy) which sovereignty may, after all, possess, provided the parties involved (or an active court, as the case may be) are willing.

Conclusion

The two parts of this paper demonstrate more than everything else, the author of this paper believes, not the radical transformations the doctrine of sovereignty has undergone since the times of medieval Europe, but rather the actuality which these transformations attest: that it is an 'elastic' notion adaptable to social and political change; so much so, that it can contain both the Hobbesian absolutist and rigid perception of unqualified insubordination and, at different points in time, the idea that the Sovereign is bound by god, law, morality or its peers; the conceptions about its exclusivity, indivisibility and inalienability and, at the other extreme of the scale, notions about its divisibility or its being a 'bundle of powers'. Without going into the specific ramifications for this or that type of model for the solution of the Jerusalem question, the implication stemming from this wide conceptual and practical range may be that sovereignty as a concept of international law dictating cogent requirements
can be put aside during the agreed future negotiations on Jerusalem, and that whatever the agreed permanent settlement is, it will either accommodate existing models of sovereignty, or generate a new type of such a model, which the broad range of possible sovereignties will nonetheless stretch to cover.

Notes


2 [My stress - R.M.G.]; Article I, Declaration of Principles.

3 The talks begun on May 5, 1996; see also Article XXXI(5), Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed at Washington DC, on September 28, 1995 (‘the Interim Agreement’).

4 Article V (3), Declaration of Principles, and Article XXXI (5), Interim Agreement.


10 Bodin, J. Les six livres de la Republique: 1576.


17 Steinberger, H. 1987: 408.


21 Article 2(3), 'Charter of the United Nations.'
Same, Article 2(4).

Same, Article 51.


Article 15(8).


Supra.


A similar example is Security Council Resolution 827 of 1993, which established a tribunal for adjudicating crimes in the former Yugoslavia. It's binding resolution also calls on member states to adopt national legislation to implement the tribunal's decisions.

See, for example, Article 36 of the Statute of the International Court of Justice.


See infra.


We may refer to these as vertical and horizontal structures of power, respectively.


1989. ‘On Sovereignty’.


Article I, Declaration of Principles: 457.

Article I, Montevideo Convention on the Rights and Duties of States, 1933, (1934) American Journal of International Law (Supplement) 75. This is a regional treaty which, in that respect is widely regarded as reflecting a principle of customary international law, which has a universal application.
55 The SS Lotus, PCII, Series A, No 10 (1927), at 18.
60 Although it may be that an 'unequal condominium', existed between Austro-Hungaria and Ottoman Turkey in relation to Bosnia Herzegovina; see: Schneider, P. 1987: 58.
63 Schneider, P. 1987: 59.
64 Bernhardt, R.: 565, n. 3.
66 The Cromer-Ghali Agreement between Great Britain and Egypt, 19 January 1899, signed at Cairo: (1898-1899) 91 British Foreign State Papers 19.
71 United Nations Special Committee on Palestine, Report to the General Assembly, Official Records of the Second Session of the General Assembly, Supplement No. 11, Vol. I: 146. This arrangement was to apply for a limited duration of 10 years.
73 Same, Article 2(4): 6.
75 Same, Article 2(4): 6.
79 Case Concerning the Lighthouse in Crete and Samos, (1937), PCII, Series A/B, No. 71.

Such as the laws of armed conflicts.


Article I, Declaration of Principles: 508.

Examples of leases are given by: Jennings, R. and A. Watt. [n.d.]: 568-570.


Riphagen, W. 1975: 122.


Riphagen, W. 1975: 122.


See the paragraph dealing with internationalisation, supra.

This regime was not included in our survey for several reasons.


THE CONCEPT OF SOVEREIGNTY REVIEWED:

THE BELGIAN EXPERIENCE

- From unique and indivisible sovereignty
to relative and interdependent autonomies -

Hugues Dumont (FUSL)

Introduction

When reading the proceedings of the first Israeli-Palestinian academic international seminar about the future of Jerusalem, one is struck by the crucial importance of the concept of sovereignty in the debates raised by the search for an appropriate status for Jerusalem. Gershon Baskin said it very clearly in his first speech: 'The central question and quandary regarding the future of Jerusalem is found in the link between sovereignty and territory. It is necessary to examine the meaning of sovereignty in greater depth.'

It is obvious, indeed, that if the Israeli and Palestinian nations consider the sovereignty they each claim on the territory of Jerusalem, as an unlimited self-determined power, exclusive and indivisible, they will never reach an agreement. Fortunately, we may assume these days that such a definition of sovereignty corresponds to an outmoded view. However, in this matter, we must not rely on assumptions. We must accurately examine the situation and evaluate the reality of this assumption.

This is the subject we are going to elaborate in this contribution, but from a limited point of view. This point of view is that of the Belgian State. Belgium presents a twofold interest in the course of a research on the present meaning of the concept of sovereignty. As a member of the European Union, it shares the fate of the other components of the Union which have all their international sovereignty questioned.

As a federal State dominated by two Communities having each an increasing autonomy, it is experiencing at the same time an internal, vacillating sovereignty.

However limited in scope, one could fill a book with such a topic. In the context of our collective research, we must of course limit ourselves to sketch a few outlines. Another border must also be set from the beginning. We will essentially analyse the theory of the State and of the constitutional law. Ideally, we should have referred more often to international law and political science. But this has not been possible here, due to lack of place and time. Finally, one last but important precision: the mechanisms of the principles of autonomy and territory, specific to the Region of Brussels are the subject of a presentation made by Mr. Philippe Gérard. We did not
want to repeat here his analysis. However, when they present a particular interest for a reflection on sovereignty, we refer to them, specifically.

This presentation is divided into three parts. First of all we will present the concept of sovereignty in general and in the European context. Then we will describe the paradoxes of the sovereignty of the Belgian State. And then we will talk about the degree of sovereignty of the community-regional autonomies which have been organised inside the State and in Brussels, in particular.

1. The concept of sovereignty in general: from the absolute to the relative

The concept of sovereignty is one of the most controversial concepts in the general theory of law. For most jurists, it remains the decisive characteristic which allows to distinguish the State from the other public and private entities. They describe this characteristic as the quality typical of to the state power which is to be supreme and independent: ‘supreme’ means, ‘above any other power’ in the internal legal order; independent signifies, ‘exempt from any subordination to a foreign power [...] from an international point of view’.

However, an important trend of the theory of law denies this idea of qualitative difference between the States and the other political collectivities based on sovereignty. For the jurists adhering to this trend, more particularly H. Kelsen, there is no strict dividing line any more between the State legal order and the legal orders surrounding it, which are the international order, the supra-national orders and the infra-state orders.

Between the various political entities corresponding to these orders, there would only be quantitative differences in the degrees of centralisation of the respective powers. The State can then only be defined as a judicial order ‘relatively centralised’, and the sovereignty would be a concept as irrelevant as misleading.

We cannot dig into this controversy here, but we may think that sovereignty remains an operative concept only if we understand its relativity. It remains an operational concept as it provides to the State a correct definition - and certainly more precise than the kelsenian criterion, which is particularly vague. But it is true that the supremacy and the independence which it attributes to the State have only a relative significance these days. On a more profound level, we must admit that sovereignty has become a paradoxical concept as the legal reality sometimes confirms it and sometimes invalidates it. Everything happens as if, at any level, it permits itself to be identified and located to immediately disappear. The purists will deduct that it would be sufficient to condemn it. We cannot share such a conclusion, as it fails to recognise the complex character of juridical phenomena which often contain contradictory logic. It is better to recognise them than to pretend to overcome them by reducing syntheses.

Bearing that in mind, we will briefly explain the main meanings of the concept of sovereignty which we will use then in the second and third parts of this contribution. Four questions will be examined successively. What does the international sovereignty of the States mean today?(1.1.) What does the internal
sovereignty of States mean? (1.2.) Can we call the federate States sovereign States? (1.3.) Are the Member states of the European Union still sovereign? (1.4.)

1.1. The international sovereignty of the States

It is still correct to say that the States are sovereign in the eyes of international law. Jean Combacau writes that this international sovereignty of the State: ‘[it] is not a power, but a quality of the power’ acknowledged by the international law. This quality means ‘not to be submitted to a superior power’. It designates ‘the liberty of the State to do what is within its power’6. This power may and must be limited, but this is mainly through conventional rules which it accepted itself. The international law is, indeed, still ruled by the principle of the autonomy of the will of the States. Jean Combacau also says, ‘the State may restrict, as much as it deems appropriate, its future liberty, as long as it does so using its present liberty’.7 Thus, the international law is basically secondary compared to the internal laws. It results only from the voluntary self-limitation of the sovereign States.

After this reminder, we must immediately add two remarks. First of all, we could not fully understand the relations which exist presently between the international legal order and the internal legal orders if we reason only from the point of view of their sovereignty. The international legal order has also its own consistency and thus some independence. Depending on all the States, it does not depend on one in particular. However, logically, it should be recognised as having some priority over the internal laws. This is why the question of the sovereignty of the States is different when it is considered from the point of view of the international law or from the point of view of the internal law. If we consider it from the point of view of the international law, we must admit that the priority of the international law not only holds benefits for treaties but also, and this is admitted more and more, to the international customs which have not been approved by all the States to which they apply. The international customs seem to undermine the principle of the sovereignty of the States.8

On the other hand, second remark, the jurist may not ignore the weight of the facts as well as the political logic. If, legally, the States are free to limit or not their independence through agreements, politically, they are forced to respect multiple international commitments, in order to control the destiny of their people in fields which are vital and at the same time have an international dimension, such as economy, security and ecology.

The external sovereignty of the States can only mean a basically relative independence, compatible with its insertion within legal relations ruled simultaneously by the autonomy and the interdependence.

1.2. The internal sovereignty of the States

Our second question is about the internal dimension of the sovereignty. Here also, we must recognise and consider as relative the extent of the concept. Let us
first acknowledge it: in the internal legal order which it represents, the State has a supreme power. Who holds it in reality? In a constitutional regime, the only sovereign power is the framing power (pouvoir constituant originale/Verfassungsgebende Gewalt), the one that adopts a new Constitution not linked to the rules of the one which was possibly previously applied. This case is indeed, an act of creation or foundation, which is essentially sovereign.

Having said this, we must point out the limits of this supreme authority. First of all, such act of sovereignty occurs, by definition, under exceptional circumstances, for instance, the foundation of a new State or a revolutionary rupture with a previous constitutional order.

We must then note that even this is not always totally ‘omnipotent’ or ‘entirely original’ because the constituent may only act following a few ‘pre-constitutional’ rules adopted by ‘pre-constitutional bodies’. When human beings are concerned, there are never absolute foundations. There is always an ‘already there’ before the act of foundation which somehow influences it.

Finally and mainly, after the adoption of the original Constitution, the sovereignty, a unique and indivisible trait of the nation, disappears to give room to the constituted authorities. The practical exercise of the sovereignty, which may then start, is immediately doomed to division due to the principle of separation of the powers which is inherent to the modern constitutionalism.

Indeed, the Constitution may be revised. But the authority competent to execute this must respect the procedures and the fundamental rules prescribed to this end by the original constituent authority. The power in charge of the revision is only a constituted power and is thus not sovereign. As far as the other constituted powers are concerned, they have legally equivalent authority in that, in any case, they are also submitted to the same constitutional rules. There is thus no parliamentary sovereignty. Even the so called supremacy or pre-eminence of the legislative power, which varies anyway from one regime to the other is very relative. It must be examined within the limits set by the Constitution as it is interpreted by the possible constitutional jurisdiction. And it must also be examined by taking into account the powers of appreciation and interpretation, often significant, which belong necessarily to the administrative and judicial bodies for application of the laws.

From this second list of thoughts, we may draw two conclusions. First, we must recognise that national sovereignty, unique and indivisible, is perfect only when it concentrates on one exceptional act, that of the constituent foundation, and that this moment itself could only be illusory as it can neither totally cancel the past nor organise the future. The paradox is irreducible: the sovereignty is by definition unique and indivisible, but it can extend in time only if it is divided between multiple authorities and thus if it finally looses itself. The unity of the sovereignty could remain intact only in the States of the Ancien Régime where it was represented by a Prince. Attributed to the people in the democratic regimes, the sovereignty may last only if it is divided and shared. This applies even to the most homogenous State-nations.
Secondly, the powers constituted inside the democratic State may be called sovereign but in a weakened sense. This meaning needs to be defined as it cannot be overlooked, even if it cannot be confused with the sovereignty in the strict sense.

This sovereignty in a weak sense may be defined as a degree of exclusivity in the exercise of the powers attributed to a public authority. The decisions taken by this authority are imposed to all their addressees, without the intervention of any other authority except, in some cases, to sanction an action *ultra vires*. This concept is relative by definition as it concerns a *degree of exclusivity* in the exercise of an authority limited by rather precise rules of competencies.

1.3 The non-sovereignty of the federate States

The specific case of the federate States justifies a third round of thoughts. These days, everybody agrees to say that a federate State is not a sovereign State. The most decisive reason of this non-sovereignty of the federate State is the absence of what we may call 'competence of the competence'. The federate state does not have the right to decide itself what falls or does not fall under its competence. This right belongs exclusively to the federal Union that may change the powers of the federate States through a revision of the Constitution. Even in the case of a federalism by association (or aggregation), we cannot claim that the States that go from sovereignty to federation, would only transfer the exercise of one part of their sovereignty, while keeping the whole of its substance. The transfer of sovereignty appears to be, indeed, except in the case of a revolution, irreversible 'as the later changes of the federal Constitution [...] will be adopted by the majority of the members of the constituent Assembly'. The substance itself of the sovereignty is thus affected.

If the federate States are not sovereign and thus no real States, however, their autonomy is substantial. One knows, indeed, that through the application of the double principle of autonomy and equality that defines the federalism, the federal statutes and the federate statutes are on the same level, except for possible competitive matters where the federal statutes may 'break' the federate statutes.

Both are submitted to the sole respect of the Constitution as it is interpreted by the constitutional jurisdiction. The sovereignty in the weak sense of the federate collectivities is thus not comparable to the very limited autonomy which belongs to the local collectivities such as the provinces and the municipalities. The federate collectivities exercise definite powers in total autonomy, without being subordinated to the federal authorities. These may not make their concept of the general interest that prevail in matters attributed by the Constitution to the federate entities. Also, the autonomy of the federate entities is generally guaranteed by their right to participate in the revision of this Constitution and extended by their right to participate in the conduct of the federal affairs thanks to their representation more or less equal in one distinct legislative Chamber.

For these reasons, the political experts often say that federalism goes together with a *share of the state sovereignty*. From a legislative point of view, this is false
because the concept itself of shared sovereignty is a contradiction in terms, but from a political point of view, we must admit that the expression is partially true. The jurists and the political experts may, however, agree when they observe that federalism executes a share of the exercise of the sovereignty in the field of competencies which the framing power did not keep for itself.

1.4. The paradoxical sovereignty of the member states of the European Union

One last but important particular case deserves our attention. What happens with the States sovereignty when they integrate into a wider political collectivity such as the European Community? To try to answer this question, one must consider two points of view: a formal and a material concept of sovereignty.

The formal concept is the criterion of ‘competence of the competence’. According to it, the member states of the European Union remain sovereign, while the Union itself is not sovereign yet.¹⁴ It appears, indeed, that it remains based on treaties which may only be revised with the agreement of all the contracting States. Each State remains thus master of the treaties, as it may, in theory anyway, alone, oppose a revision which would not suit it, as well as come back to its initial adhesion through a contradictory act. Each State thus keeps the power to decide itself what comes or does not come under its authority. The transfers of competencies which have been done in favour of the Union are not irreversible. Thus, they could not be confused with a transfer of the States sovereignty.

This analysis is exactly the analysis of the German constitutional Court in its judgement of 12 October 1993 issued about the Treaty of Maastricht.¹⁵ One could express it differently by saying that we are still far away from a European Constitution revisable at the qualified majority. This would assume either the conclusion of ‘a treaty of fusion transferring the power of the last word’ to the Union¹⁶, or a revolutionary rupture with the original state sovereignties, rupture caused by an assembly which ‘would have received mandate, from each electoral national body’ according to the scheme adopted for the foundation of the United States and Switzerland.¹⁷

Following the material concept of sovereignty, however, it is certain that the ‘process being used in the European construction leads to a loss of sovereignty and to a substantial modification of the constitution of each State.’¹⁸ Following this material concept, sovereignty includes necessarily a minimum of elementary prerogatives without which a State could not exist as a public power.

This concerns more particularly the legislative, executive and judicial functions as well as the practical means of the public power: public property, army, police and currency.¹⁹

This is what the French constitutional Council calls the ‘main conditions for the exercise of the national sovereignty’.²⁰ However, it is clear that the European integration could not reach its present situation without the transfers²¹ of authorities in these important fields of the public power. One does not need to remind that, for example, the Treaty of Maastricht takes away from the member states their power of
self-determination concerning monetary policy, exchange policy, as well as policy concerning customs and borders. In these main fields, the States have lost their right of veto to the profit of the European Central Bank and the Council of Ministers deciding by qualified majority. In its decision of 9 April 1992 (called ‘Maastricht I’), the same constitutional Council has underlined these various attacks against the French national sovereignty.\(^{22}\)

We thus reach a paradoxical situation. Formally, the member states remain sovereign and the European Union is only a ‘very integrated confederation\(^{23}\) of States, but materially, the first ones have already lost their unilateral power of decision in fields concerning the hard core of the Staatlichkeit (the ‘fact-of-being-a-State’) and the second hold more and more prerogatives similar to those of a State. This is what Olivier Beaud calls a ‘disjunction’ doubled by an ‘inversion between the state form and the state matter’.\(^{24}\) This phenomenon calls for a diachronic analysis rather than a synchronic of sovereignty. A process that tends to give less powers to the Member states and to give more powers to the European Union, is thus pending. One of the main characteristics of this process, of this progressive transition, is that it takes place in some kind of ‘clandestinities’. The authorities derived of the member states as well as the authors of the European treaties, carefully avoid to answer the question of the legal qualification of the European Union.

This is to circumvent divisions that could be fatal to the ongoing construction. It is significant to observe that the writers of the American Constitution used the same principles of silence in 1787 about the nature of the Union.\(^{25}\) As a conclusion, we want to point out that the European integration confirms the profound relativity affecting the concept of sovereignty today. On all levels, as soon as it can be identified and located, it disappears.

2. The paradoxical sovereignty of the Belgian State

The sovereignty of the Belgian State has of course all the general characteristics we have just mentioned; namely, the international, European and internal dimensions of the concept. This is enough to qualify this sovereignty as paradoxical. Also, the examination of the peculiarities of the Belgian State, of what makes it different from the other member states of the European Union, confirms our choice of such qualification. This is what we would like to demonstrate now.

We have said above that the owner of the sovereignty in the internal order is the people or - let us say here that both expressions are equivalent - the nation. The foundation of a sovereign State, be it unitary or federal, is the desire of the people to live together. A Constitution gives shape to this foundation. But it cannot replace it.\(^{26}\) Two nations which do not have that desire to live together may found a confederation, but they could not found a real State. For this reason, the general theory of public law defines the Constitution as a unilateral act and not as a pact. Olivier Beaud writes that an inter-state constitutional pact ‘would mean the dissolution of the unity of the State as it divides the constituent sovereignty into two authorities which may, at any time, pretend to be sovereign’.\(^{27}\)
The main problem of the Belgian State today may be summarised in the light of these considerations. This State has never had a very solid national foundation, but for a long time it did have a minimal social consensus. This can mainly be explained by a subtle game of exchange between the large political families of the country which the theory of democracies qualified as ‘consociative’ describes accurately. The question which has been more and more acute these last years, mainly because of the increasing power of the Flemish nationalist movement, concerns whether this minimal desire to live together may come apart without questioning the unity of the State. In other words, behind the legal form of a unilateral Belgian Constitution rooted in the desire of a whole nation to live together, the political reality of an inter-state constitutional pact, thus essentially precarious, between the two large Dutch and French-speaking Communities of the country, becomes more and more real.

The sovereignty of the Belgian State is affected by a new paradox that adds up to the paradox of being a member state of the European Community. Formally, the State is still sovereign and the Communities are only federate entities, but politically the State has already lost, to a large extend, all capacity of autonomous decision without consensus of the Communities. This phenomenon calls again for a diachronic analysis and not for a synchronic analysis of sovereignty.

A process is pending to give less powers to the Belgian State and to give more powers to its Communities. This process goes on in some kind of clandestineness, as in the case of the European integration. Nobody knows whether it will reach its end, which is the disappearance of the State. The political representatives in power have refused up to now to question the holder of the sovereignty - the Belgians - on their desire in this matter. In this process, the Region of Brussels has a key position. Because the two large Dutch and French-speaking Communities want to keep their present prerogatives on the Region of Brussels, none of them separates and the Belgian State still resists the centrifugal trend which is undermining it.

As long as this safety-valve works, Belgium will keep inventing by trial and error a unique institutional system, between federalism and confederalism. The classical terminology of the modern public law does not have the word to designate this ‘irregular formation, looking like a monster’, as Pufendorf would have said, if he were still here to contemplate it. However, in his recent works, the French theoretician on the State, Olivier Beaud, strongly inspired by Carl Schmitt, presents a critique on the old distinction federal State/Confederation that could help us give a name to this monster.

The author points out the distance which separates the first formulations of the federal idea in the political thinking - in particular by Montesquieu and Tocqueville - from the legal characteristics which the model federal States, such as the United States, Germany and Switzerland, represent today. He goes back to these doctrinal origins, keeping a distance from the federalism represented by the model-States, he elaborates the concept of Federation, extending a definition formulated initially by Carl Schmitt. This concept could be used to name the political constructions that reach an integration stage, superior to confederalism and inferior to the federal States.
He proposes this working hypothesis in the prospect of a new legal analysis of the European integration.

We dare use it as one of the possible scenarios - we do not say *desirable* scenarios, but possible - of the future evolution of the Belgian State.

According to a still approximate definition, a Federation would be 'a community of nations [...] that does not absorb the member-nations in a new and large nation'.\(^36\) This first characteristic seems to justify immediately a terminology amendment. One proposes to add the adjective 'plurinational' to the noun 'Federation' to better underline the difference between the federal State which is generally uni-national.\(^37\) One may then agree to define more precisely a plurinational Federation as a voluntary and free, but also lasting union, of equal political entities, not sovereign, but too autonomous to bear the unity of a federal constituent authority, only sovereign.\(^38\) Let us explain this definition.

The components of a plurinational Federation do not accept the 'typical state figure' of the subject relation we find in the Federal State when its constituent power unilaterally imposes its will on the federate entities by a decision taken by the majority.\(^39\) The plurinational federation is thus a 'political and legal heterodox construction [...] compared to the dominant model of the nation-State and the theory of sovereignty which assumes a unity of power on a same territory'.\(^40\) It relies on a 'federate constitutional pact' negotiated on between the national entities owning the constituent power. This pact is situated between the inter-state treaty and the ordinary Constitution.\(^41\)

This confirms that a plurinational Federation should not be confused with a federal State as it is not a sovereign State as is any federal State, due to the duality of its constituent powers. Also, it is not to be confused with a confederation. Because the components it associates are no sovereign States either.

If the federate constitutional pact has a contractual origin, afterwards it becomes a statutory norm creating 'an institutional order which goes beyond the existence of those who have concluded it.' This status 'denies thus all right of secession' to the member-nations.\(^42\) The federate nations also have to 'tolerate the interferences of the Federation' in their own competencies, 'which is the denial of sovereignty itself'.\(^43\) Their constituent power itself is limited by the federate pact.

The characteristic of such a Federation would be that it follows a strict 'egalitarian and anti-hierarchical logic'\(^44\) which leaves the question of sovereignty unanswered, this question concerns as to who has the right to rule, as a last resort: the Federation or its components.

If Belgium manages to avoid the splitting, it will maybe go towards this 'non-state federalism'\(^45\). One may even think that it is already very close to it politically.

3. The subtle gradation and the variable geometry of the community-regional autonomies in Brussels

The Communities and the Regions that form the Belgian State are, according to the law, federate entities. They are not sovereign. They only benefit from the
sovereignty in the weak sense we have defined above, which refers to - let us repeat it - a degree of exclusiveness in the exercise of the powers through which they impose their decisions to all, without any other possible authority of intervention except to sanctioning an action _ultra vires_. One enters here into the field of relativity as there is room for various degrees of exclusiveness.

Assuming that the institutional system in Brussels is known, from other contributions, we would like - to end our contribution - to present a short classification of the main competent institutions of the Brussels territory in the regional and community matters, according to the criterion of the degree of exclusiveness.46

We will show here how the levels corresponding to each degree of autonomy are only separated by small gaps which have made an agreement possible between the contradictory demands of the French-speaking and of the Flemish. We will also demonstrate that one institution may have different degrees of autonomy according to the type of competence it exercises, which has also made the compromise easier between the partners of the negotiation on Brussels.

3.1. The highest level on the scale of autonomies

On top of the scale, at the highest level of autonomy, are the French and Flemish Communities whose decrees apply to the institutions of their respective Community in Brussels in matters of culture, education and persons.47 On the same level, the federal State remains the only one competent to legislate in Brussels on the use of languages48 and in the bi-community matters concerning both communities and which have to do with culture and education.

Also at the highest level, is the French Community Commission ("Commission Communautaire française, en abrégé COCOF") when it legislates through decrees in the community matters that have been transferred to it by the French Community following article 138 of the Constitution.

Why do we have to classify these four institutions - both Communities, State and the COCOF - as long as they act in the fields referred to, in the category of the most autonomous political collectivities in Brussels? Simply because the decrees of above Communities, the federal statutes of the State and the decrees of the COCOF have something in common which is to be submitted only to the respect of the Constitution and of the special statutes distributing the competencies taken according to the Constitution.

3.2. The second level on the scale of autonomies

On the second level on the scale of autonomies, we find the Region of Brussels-Capital itself, when it legislates through ordinances in ordinary regional matters, which concern all the regional matters except for, town planning, organisation of the territory, public works and transportation. These ordinances, which we may call ‘normal ordinances’ or ‘real ordinances’ have the force of a statute, while being
specific compared to other legislative rules like statutes and decrees: they are submitted to a wider judicial control. The normal ordinances are not only subject, as the statutes and decrees are, to the judicial review by the Arbitration Court. They are also submitted to a control of conformity to the rules contained in the Constitution and in the special law concerning the institutions of Brussels other than those controlled by the Arbitration Court. This additional control may be done by any jurisdiction. A certificate of non-conformity must make the judge refuse the application of the ordinance concerned. 49

This difference between the normal ordinances and the other legislative rules is very small. The practical impact is extremely reduced. But - and this is what is interesting to underline - it has a symbolic range which has played an important role in the negotiation of the special act of January 12 1889. Together with other particularities about which we will talk further on, this small difference contributed to overcome the reserves of the Flemish political parties. These have never accepted the French-speaking demand that Brussels be organised as a Region strictly similar to the two other regions. The slight inferiority of the Brussels ordinances compared to the decrees of the Flemish and Walloon Regions has allowed them to grant the Regional autonomy to Brussels without losing credibility. This shows that only a few millimetres between the steps separating the degrees of autonomy of some competent institutions in politically sensitive fields, may facilitate a compromise between contradictory demands.

Of course, this very small difference would not have been enough alone. It adds up to other balancing elements. Among these, there is the creation of linguistic groups in the regional Council 50, the alarm bell particularly important for the Dutch linguistic minority group 51 and above all the qualities of the composition of the Government of the Region. 52 The technique used in the last of these elements is again very clever. It has answered the contradictory expectations of the Dutch and of the French-speaking. The Flemish wanted equality of the seats according to the model of the Council of Ministers at the federal level 53, while the French-speaking wanted to have the majority, as they represent 85% of the population in Brussels. The Flemish have obtained what they wanted as the Government of Brussels includes two French-speaking ministers and two Flemish ministers, the fifth ministerial mandate being reserved to a president who is theoretically neutral. But the French-speaking have also obtained what they wanted. On the one hand, they have obtained the guarantee that the president would be French-speaking. On the other hand, they profit from a compensation on the level of the regional State secretaries who assist the ministers of the Government: two out of three are French-speaking. One knows the importance of the executives in the elaboration of the statutes. The Government of Brussels is also important in the making of the regional ordinances. One understands thus better of the importance of this compromise concerning the composition of the regional Government. Without it, the normal Regional ordinances for Brussels would not have acquired a legislative status.

At the same level on the scale of autonomies, there is also the Joint Commission for Community Matters ('Commission Communautaire Commune', or 'COCOM')
abbreviated). It legislates in matters concerning both communities through community ordinances. One knows that they require a double majority: one majority in each linguistic group of the gathered assembly of this Commission 44 (one assembly which coincides practically with the regional Council). One understands thus that these community ordinances have managed to have the same legal force as the normal regional ordinances. 55

3.3. Third level on the scale of autonomies

On the third level of the scale, we find the Region of Brussels-Capital but then only when it is acting in a field of exceptional competencies. The same political collectivity is thus sometimes on the second level, some times on the third level of the scale of autonomies, according to the type of competence it exercises. We are facing here what we may call the variable geometry of the autonomy of the Brussels Region.

Practically, when the Region of Brussels wants to legislate in four politically sensitive fields such as town planning, organisation of the territory, public works and transportation, its degree of autonomy decreases by one level. The particular ordinances it adopts in these matters are acting as statutes, but they are submitted to controls which make them similar to subordinate legislation. These are judicial controls applicable to normal ordinances and, moreover controls of a political nature: they are submitted to an adjournment, cancellation or substitution authority exercised by various bodies of the federal State in order to ‘maintain’ or ‘develop the international role or the function of capital of Brussels’. 56 Practically, these controls - which have not been applied yet - do not prevent the regional autonomy. Their range seems essentially preventative and symbolic.

The conclusion is that through the normal regional ordinances Brussels is a federate political collectivity, while, through the particular regional ordinances, it is only a decentralised political collectivity. Here the law still bears the mark of the compromise between the French-speaking people who wanted Brussels to be a complete region and the Flemish who wanted a federal State in two parts as they were scared that a ‘third power would be the arbitrator between Flanders and Wallonia’. 57

3.4. The fourth level on the scale of autonomies

On the lowest level of the scale 58, are the French and Flemish Community Commissions. Here again we see the phenomenon of the autonomies with variable geometry. The COCOF has been mentioned already on the first level. It has also other competencies and has to be mentioned in the fourth degree on the level of its colleague the Flemish Community Commission. At the same time, one meets another phenomenon which is also a characteristic of the Belgian institutional landscape: the asymmetry of some institutions that correspond to different models depending on whether they are Dutch or French-speaking.

Both Community Commissions are on the same level when they act as organising powers of various services in community matters 59 or as holders of
regulatory competencies which have been transmitted respectively by the Council of the French Community and the Flemish Council. They have then the status of subordinated political collectivities. They are, indeed, submitted, on this occasion, to the authority of their Community. The asymmetry is striking as the Flemish Community Commission only has the status of decentralised entity, excluding any other, while the COCOF has the status of federate entity when it exercises the decretal power in the matters transferred following article 138 of the Constitution.

Conclusion

We propose three conclusions.

1) The first conclusion concerns sovereignty in a strong sense. Our inquiry in this matter may be summarised in two parts. Firstly, the concept remains a distinctive criterion of the State and of the place taken herein by the framing power. The relativity of this criterion has been underlined from the very beginning. The independence characteristic of the State because of its sovereignty, hits some limits inherent to the logic of the international law. This branch of the law is maybe still ruled by the principle of autonomy of the will of the States, but it is not totally reduced to it.

Also, it has been demonstrated that the supremacy, the unity and the indivisibility which characterise the sovereignty of the framing power are limited due to the division which affects the practical exercise of this sovereignty in the State. The case of the federate States which has been mentioned then, confirms this opinion.

Secondly, we have presented the particular situation of the Member states of the European Union and more particularly, of the Belgian State. The concept of sovereignty has then appeared as totally paradoxical. We have demonstrated that the paradox lies essentially in a disjunction between the formal and material aspects of the sovereignty. This disjunction has allowed a more diachronic analysis. We have, for instance, observed the possible emergence of a political and institutional world where the question of sovereignty would be held continuously pending. We have tried, with Olivier Beaud, to name this world: the ‘pluri-national Federation’.

Already now, one may observe, briefly summarising, that the Member states of the European Union are not totally sovereign any more, while the sovereignty has not been totally transferred to the European Union. The Belgian State is even less sovereign than its European partners because of its basically dual structure. But its Communities and Regions have not profited either from a real transfer of sovereignty.

The jurists may, of course, put their heads in the sand and dismiss this evolution. To do this, they only have to use, as they usually do, an exclusively formal analysis of the sovereignty. But if one admits that the law can only be apprehended correctly through simultaneous analysis of its formal and material components, then we must admit that Europe, and Belgium in particular, divert radically from the classical political universe where the question of sovereignty has always had a clear answer. Progressively a structure is being built in which the political entities competing for
sovereignty cannot be separated. Their inter-dependence is against that. The sovereignty in a strong sense leaves then room to sovereignties in a weaker sense. In this universe, several entities which are ex aequo, may reach together the first step of the podium of sovereignty.

We could not end this first conclusion without asking two delicate questions. Isn't it the new configuration we have just described unstable and thus short-lived, in other words, transitory? Will the classical logic of sovereignty, which cannot be shared, take over? Couldn't we imagine that Europe of the Fifteen will change into a real federal State and that Belgium would disappear behind two new micro federate States of this European Federal Union? This is a possible scenario for the future. It is maybe not the most likely at medium range. In fact, we are facing here the unpredictability of history.

One may also wonder - this is the other question announced - whether this return to a classical scenario is more or less desirable than the stabilisation of the current changes. We couldn't answer this question here, due to the length of the developments it requires. We can only explain it in a few words. In a complex world where there is room only for relative and interdependent sovereignties, are the subjects of these sovereignties still able to conduct ambitious politics at the service of their people? Isn't the breaking up of the levers of the political action leading towards some kind of collective incapacity which would generate regret of the old world of the sovereign States? To reassure ourselves, we say that the political practice has not had the time yet to adapt to the new network structure. But in the meantime, we must recognise that neither the European Union nor the Belgian State or its components have, up to now, demonstrated convincingly that it could be used for the best.

2) The second conclusion concerns the sovereignty in a weak sense. In the European and Belgian context, as we just said, the distinction between the weak sense and the strong sense disappears. A gradualist approach of the sovereignty is thus compulsory at all levels. A special observation of the gradation of the community-regional sovereignties in Brussels reveals the pacifying virtues of this approach.

As no political collectivity pretends to be the holder of a unique and indivisible sovereignty, it has been possible to answer quite satisfactorily the desires for autonomy of each collectivity, through very subtle compromises. The fact that one collectivity may have different degrees of autonomy according to the type of authority exercised, also appears to be very important. This way, Dutch and French-speaking could reach an agreement on the community-regional institutions of Brussels, while they had, at the beginning and still have, different concepts of the sovereignties to be arranged.

3) We will now come back to the case of Jerusalem as the purpose of this contribution is to compare Brussels and Jerusalem. It is up to our Israeli and Palestinian partners to say whether our analysis may inspire them to talk about sovereignty in their context, which is very different. We would only like to try to submit them four thoughts, with the only objective to start a possible debate.
First reflection. We have shown that it was impossible to organise a shared exercise of a unique sovereignty on a territory occupied by two nations that do not have a strong desire to live together. The conclusion is that it would be an utopia today to propose a solution to the problem of Jerusalem which would assume the creation of a federal Israeli-Palestinian State. It is enough to say that the model of Brussels cannot be directly transposed formally.

Second thought. Would a plurinational Federation, as we have defined it, be possible? We have doubts about this. This form of political integration, which is looking for an original way between the logic of the federal State and the logic of the States Confederation, seems indeed to assume that there is some degree of sociological homogeneity between the feeling of belonging to a same nation - this feeling underlies the first logic - and the feeling of only having common interests - which is enough to create the second logic. To our knowledge, the Israelis and the Palestinians are still far away from being able to create a Federation founded on this intermediate degree of homogeneity. This reason seems to be sufficient to declare that the model of Brussels cannot be directly transposed not only formally, but also materially.

Third reflection. If what we have said before is correct, we may assume that a proper solution to the problem of Jerusalem will only be found, at short and medium range anyway, in an international negotiation bringing together two sovereign States. Through a treaty, and thus through the free exercise of their sovereignty, both States could each decide to limit the powers they demand on the territory of Jerusalem. Only in this context the negotiators could possibly find some elements of inspiration in the model of Brussels.

Before mentioning these elements, we must insist on the peculiarities of this context. It is obvious that it is totally opposite to the context of Brussels. The chronology, for instance, are inverted. As we said, the region of Brussels is contained in a European and national context characterised by the disappearance of state sovereignties. On the contrary, Jerusalem is in the middle of contradictory demands of two nations which each long for sovereignty.

Israel is a young State naturally jealous of its sovereignty. It is important to note that this sovereignty has not even been finalised by the internal law. Indeed, the existence of a real framing power qualified to write and modify a written Constitution acceptable by all Israelis is still much debated. The deep division of the Israeli nation between the ‘religious’ Jews, who only refer to the Thora, and the other political and social forces who want a laic Constitution has prevented the setting up of a full holder of the internal sovereignty. The Harari resolution of 13 June 1950 allows each Knesset to vote fundamental statutes, is only an unsatisfactory compromise between the supporters of and the opponents against a Constitution. The judgement that has just been issued by the Supreme Court of Israel on 9 November 1995 in the affair Bank Hamizrachi United against Kfar Chitufi Migdal and consorts has finally clearly laid down that these fundamental statutes create a superior law. It leaves unsolved other essential questions. The idea of a framing power remains much debated.
We think that this incapacity of Israel to end its constitutional debate, to choose between the English tradition of the sovereign legislative body and the French-American concept of the sovereign framing power, reveals the depth of the internal divisions of the Israeli nation.

As far as the Palestinian nation is concerned, it is of course less far on the road to sovereignty as it has not yet reached the threshold of the international recognition as a sovereign State.

From these basic observations, we may deduce that the question of Jerusalem will have some chances to find the beginning of a satisfactory solution only after they strengthen their sovereignties. A balanced negotiation requires partners who each have some minimal foundation. If this is not the case, it is not possible for both parties to have confidence in each other. Indeed, no contract can be signed without some previous mutual confidence and one cannot trust the other party if at the same time one has no self-confidence. Practically, as long as Israel does not reinforce the unity of its nation, it will not be able to work on concessions on such a symbolic matter as Jerusalem. As long as the Palestinians have no State, which means, have no sovereign State, it will be too much to ask them to concede limits to their virtual sovereignty, on the territory they want to have as a capital. On the other hand, when both States assert their respective sovereignty, a negotiation on Jerusalem would be more easily conceivable. Thus, it seems wiser to discuss the status of Jerusalem last, as long as, of course, during the transitory period, no accomplished fact cancels the chance for the discussion to reach a fair result.

Assuming that these conditions exist, we may imagine that a treaty on Jerusalem would transpose a few elements of the model of Brussels. The Jewish and Palestinian communities of Jerusalem could be granted this way what we called a sovereignty in the weak sense.

This sovereignty would thus be basically similar to that of the federate entities of the Belgian State or to that towards which the Member states of the European Union are heading. It would not be founded on a federal State or a plurinational federation, but on an international treaty which would be limited to the expression of how to exercise both sovereign powers in the city of Jerusalem. The negotiation of this treaty will have to take into account the mutual concessions previously done in the other Israeli-Palestinian agreements. In this context the subtle gradation and the variable geometry of the community-regional autonomies in Brussels could inspire solutions of similar compromises.

Fourth and last reflection. The history of the American federalism, the history of the European integration and the history of Belgium have one common point: observations on the lot of the sovereignties concerned, have always been done a posteriori. In none of the three cases, the institutional landscape has been drawn from a pre-established model based on a clear vision of the transfers of sovereignty to be executed. The changes that led to the present situations - and these changes are still ongoing for Europe as well as for Belgium - have never been clear as far as the stakes of sovereignty are concerned. We may regret this, but it is a reality. It will probably be the same for the Israeli and Palestinian political entities in Jerusalem. The scale
of levels of autonomy that will be finally attributed to each of the two entities, will certainly not follow a pre-established scheme. Maybe things will be clear after the negotiation. We have observed that the underlying compromises to the status of Brussels had authorised contradictory readings, while being relatively practical. We hope to meet again in a near future to decipher together the compromises which your nations will come up with, for the best of peace and justice.

Notes

7 Combacau, J. 1993: 57.
14 On this judgement, see: Lejeune, Y. 1984: 13 [and foll.]
15 This would be a materially constitutional treaty. On this concept see: Beaud, O. 1994a: 447-449.
20 Beaud, O. 1994a: 465 [and foll.]
21 On the distinction between the transfers of authorities affecting the heart of the authority of the State and the limitations or delegations of authorities which affect only secondary elements of this power, see: Beaud, O. 1994a: 466 and 478.
25 Beaud, O. 1994a: 486
26 See: supra, 1.1.
27 See: supra, 1.4.
28 See: supra, 1.2.
32 See fr. art. 33, al. 1er of the Constitution: 'Tous les pouvoirs émanent de la nation'.
33 Precise legal mechanisms authorize this reading, in particular the linguistic equality of the Council of ministers, the required majorities in both linguistic groups of the legislative Chambers for the 'special' statutes, the 'alarm bell'-procedure foreseen by article 54 of the Constitution and the main role of the co-operation agreements, among others, in the field of external relations. On the debate raised by these mechanisms concerning the qualification of 'confederalism' they would justify, see: Dumont, H. 1989: 109 [and foll.], Dumont, H. 'Droit public, droit négocié et para-légalité', in Droit négocié, droit imposé ? under the dir. of Gérard, Ph., Ost, F. and M. van de Kerckhove. 1996. Bruxelles, Publications des Facultés universitaires Saint-Louis: 481-486.
35 One finds this famous expression in his book on the German Empire in 1667.
38 This definition summarises the main elements presented by Beaud, O. 1996: 41-58.
39 Beaud, O. 1996: 50. See also p. 47 and 58.
40 Beaud, O. 1996: 49.
41 Beaud, O. 1996: 50.

The model of Brussels presents other important characteristics on the subject of sovereignty. They are very well presented in the contribution of P. Gérard. We are referring to it to avoid useless repetitions.

See art. 127, §2, and 128, §2 of the Constitution

See art. 129, §2, of the Constitution

See art. 9 of the special act of 12 January 1989 concerning the institutions of Brussels.

See art. 23 of the special act of 12 January 1989.

See art. 31 of the special act of 12 January 1989.

See art. 34 and 41 of the special act of 12 January 1989.

See art. 99 of the Constitution. As a reminder: the Flemish and the French-speaking represent respectively 60 and 40% of the State population.

See art. 72, al.4, of the special act of 12 January 1989.

See art. 63, 68, §1 and 69 of the special act of 12 January 1989.

See 45 and 46 of the special act of 12 January 1989.


As far as provincial, agglomeration and communal powers are concerned, we are referring to other presentations on the subjects.

Others than the use of languages.

See supra I, 1), 2) and 3).

See supra I, 4) and II.

See supra I, 2), 3) and III.


ONE CITY FOR TWO NATIONS

- Presuppositions and methods of exercising power in a divided city:

the Region of Brussels-Capital as an example -

Philippe Gérard (FUSL)

1. From sovereignty to autonomy

The concept of sovereignty has often been evoked in connection with the problems of Jerusalem, as far as Jerusalem is the stake of political claims by the State of Israel and the Palestinian authorities. However, before going more into detail about certain particularities of the Brussels institutions and before evaluating their interest in elaborating the future status of Jerusalem, I would like to remind you that the term "sovereignty" includes an ambiguity.

The history of theories and political institutions can testify that sovereignty, starting with Bodin and Hobbes, was first conceived as a power of command and domination, which was later considered as one of the constitutive characteristics of the modern state. Superior to all others in the worldly order, exclusively belonging to its holder, this power corresponded to a relation of domination between the ruling people and the ones being ruled. Thus, sovereignty corresponded to a hierarchical relation which can be analysed in terms of command and obedience. As such, sovereignty has been considered as one of the essential characteristics of the dominant form of political power in the modern and contemporary era, namely the territorial state. Indeed, this one implicates a claim to a supreme and exclusive power of command to be exercised on a group of subjects situated in a well-defined territory.

As from the XVIIIth century and in particular in the works of Rousseau and Kant, sovereignty took on another shape, new connotations, when it was attributed to the people and conceived of as a power of collective self-determination which implies that the citizens must be able to consider themselves as the authors of the laws they are bound by. In this perspective, even if sovereignty can still be exercised as a power of command, its significance changes as far as sovereignty appears fundamentally as a power of self-determination belonging to the citizens. From this point of view, the ideas of popular or national sovereignty express a promise of collective autonomy remaining one of the fundamental principles of politics within democratic societies.

The two aspects of sovereignty I have distinguished correspond to the distinction proposed by Hannah Arendt, and, after her, by Paul Ricoeur. It consists in differentiating between on the one hand force and violence, and on the other hand power. As a power of command, sovereignty is part of a hierarchical and instrumental relation by which the sovereign can impose his will on his subjects. On the other hand, as a power of collective self-determination, sovereignty is no longer defined by the domination of men over men, but by the implementation of the will of
the people, or in other words, by the implementation of the collective autonomy of citizens. Here sovereignty is part of an egalitarian and non-instrumental relationship between citizens.

Now, if we intend to tackle a problem such as the future status of Jerusalem in the light of democracy, the question of sovereignty must be envisaged not only as a conflict of claims between states, but also as the problem of the collective autonomy of the people living in Jerusalem, even if these are not the only people concerned. However, the choice of this prospect collides obviously with the conflict that is opposing Israelis and Palestinians, an obstacle apparently hard to overcome. This obstacle is all the more important because, according to Arendt, power can only belong to a political Community whose members accept to act together. Consequently, the problem with which we are confronted, consists in determining the nature of the relations and institutions that would permit the Jewish and the Palestinian communities to unite themselves in order to establish and exercise a common power in Jerusalem.

As far as the institutions are concerned, bestowed on the Brussels Region in 1989, they do essentially have at stake uniting the French Community and the Flemish Community of Brussels in the government of this region, these institutions can certainly be an instructive reference for the analysis of the possible methods to install a power shared by two communities in a divided city.

2. Modes of power in the Region of Brussels Capital

When he discussed the possible models of power exertion in Jerusalem, G. Baskin proposed to distinguish a pattern of joint sovereignty, where a unique authority, representing all the inhabitants, exercises the totality of powers, and a pattern of shared sovereignty, where certain powers are jointly exercised by the totality of the authorities, whereas others are exercised independently or separately by the same authorities.

The organisation of powers in the Brussels Region corresponds to the second pattern, except for the fact that the powers, which are jointly exercised and those which are exercised independently have been attributed to distinct authorities. From this point of view, one can consider the organisation of powers in the Brussels Region to be based on a compromise between a centrifugal logic, corresponding to the wish for autonomy of the Flemish and French communities of Brussels, and a centripetal logic acknowledging the need to endow common powers to the Region.

As such, those powers that are jointly exercised, cover, firstly, the regional powers attributed to the Council and the Executive of the Brussels Capital Region, and, secondly, the limited Community powers that have been devolved to the Joint Commission for Community Matters (COCOM). The powers that are exercised separately correspond to the Community powers attributed to the authorities of the French Community Commission (COCOF) and to those of the Flemish Community Commission (COCON).
To this we can add, on the federal level, the powers belonging to the Flemish Community and to the French Community with regard to the institutions which, although they are established in Brussels, can be considered as belonging exclusively to either of the Communities because of their organisation or activities.7

The institutions that are established in the Brussels Capital Region have some peculiarities that need to be underlined. First of all, we observed that the joint powers and the separate powers are exercised by different authorities, i.e. by the authorities of distinct political bodies: the Brussels Capital Region, the Joint Commission for Community Matters, the French Community Commission, the Flemish Community Commission, and even the Communities established on the federal level. In fact, the diversity of these political bodies is essentially based on a distinction between Region and Community as dictated by Article 39 of the Constitution. According to this provision, the powers attributed to the authorities of the Regions must be different from those attributed by the Constitution to the authorities of the Communities.

This distinction region/Community can be explained by the difference in the claims for autonomy to which the Belgian constituent has answered during the constitutional revision of 1970, recognising on the one hand the existence of three Regions (Flanders, Wallonia and Brussels) and, on the other hand, the existence of three Communities (French, Flemish, and German). Indeed one knows that the regional autonomy corresponds mainly to the demands of the Walloons. Faced with a unitary state, in which the Flemish would more and more occupy the position of a permanent majority, the Walloons asked for an economic and social autonomy, which would permit them to resolve the specific problems their region was confronted with. On the other hand, the Community autonomy corresponds to the cultural and linguistic claims of the Flemish Movement. This autonomy would permit them to defend the Flemish culture considered as the victim of the unitary structures of the Belgian state, which, since its foundation, had been dominated by French speaking élites.

Thus, as regards the creation of the institutions of the Brussels Region, the separation region/Community has imposed a distinction between regional authorities and Community authorities. This distinction appears all the more important if one takes into account the Flemish unwillingness vis-à-vis the institutionalisation of the Brussels region. This reticence was motivated by the fact that Brussels, although being an enclave in the Flemish region, forms an agglomeration in which the majority of the inhabitants are French-speaking, symbolising as such a movement of French cultural domination. This same reticence was also motivated by the fear of becoming a minority within a state formed of three Regions of which two - Brussels and Wallonia - risked to form an alliance against the Flemish Community.8

Hence, from this point of view, it was important that besides the regional authorities, which would involve a co-operation between representatives of the French and Flemish inhabitants of Brussels and which would thus reflect the existence of a francophone majority in the Brussels Region, other Community authorities should be established with the aim to safeguard the specific interests of the Flemish minority of Brussels, and beyond that, those of the Flemish Community at large.
The dualism of regional and Community authorities, as well as the distinction of regional and Community powers, have permitted to establish a mechanism of joint sovereignty at the regional level, while providing the two communities, which live together in Brussels, with a margin of independence as far as Community powers are concerned. As regards Community powers, only the creation of the Joint Commission for Community Matters implies a co-operation between the two communities.

From a constitutional point of view, one cannot deny that the diversity of these bodies and their respective authorities generates an obvious complexity. This complexity is nonetheless tempered by an original mechanism. This mechanism consists in organising separate authorities and, in particular, different deliberating assemblies on the basis of one and the same group of elected representatives. In this way the 75 councillors elected by the population of Brussels are assigned to form the Council of the Brussels Capital Region and the united assembly of the Joint Commission for Community Matters. Yet, with the help of their distribution into two different linguistic groups, they also form the assemblies of the French and the Flemish Community Commissions respectively. Besides its role of simplification, this mechanism has also a symbolic scope. Actually it permits to represent on one and the same occasion the unity of the Brussels Region, the necessary co-operation between the two communities living together there, as well as the difference between these communities.

However, as regards political representation, one cannot deny that the distribution of the representatives into two linguistic groups sharpens the cleavage between the two communities. Indeed, the special law of 12 January 1989 regarding the Brussels institutions requires that the candidates for the election of the members of the Regional Council be presented on separate linguistic lists. The candidates elected from each list will form the French-speaking and the Flemish-speaking groups of the Regional Council respectively. As we have noted, these groups will also form the assembly of the French Community Commission and the Flemish Community Commission respectively.

The existence of separate linguistic lists of candidates is the result of a claim from the Flemish parties, which feared that the possibility to present bilingual lists would jeopardise the guarantees they have to protect the Flemish minority of Brussels. On top of that, the obligation to present the candidates for the Regional Council on unilingual lists corresponds to the fact that the Belgian political parties are divided according to the Community cleavage.

Beyond these provisions, one can of course wonder about the scope and the legitimacy of this dualism Region/Community which governs the institutions of the Brussels Region.

On the one hand, if one judges by the provisions of the special law of 8 August 1980 about institutional reforms, and in particular articles 6 to 11, it appears that the regional powers cover mainly economic and social domains, such as territorial development, environment and water management, housing, economy, energy, employment, public works, transportation, as well as all related scientific research.
Since they concern problems which are common to any urban agglomeration, we can assume, but this is only an assumption, that these regional powers, by nature social and economic, are particularly suited for a possible co-operation between representatives of the different communities who live in Brussels. This is because these powers seem relatively neutral vis-à-vis the linguistic and cultural identity of these communities.

On the contrary, the Community powers which, according to Articles 127 to 130 of the Constitution, essentially cover cultural matters, education and matters relating to individuals (personnalisables, i.e. public health, aid to individuals), mainly concern areas which directly involve the identity and cultural interests of the members of the communities. As such, these matters have been considered as being easier to handle by separate powers attributed to authorities exclusively representing the communities at stake.

However, it is advisable to stress that the autonomy of the French Community Commission and the Flemish Community Commission of Brussels is rather limited. Although being competent for all Community matters, both Commissions essentially have only the power to make regulations (règlements), either as authorities being responsible for organising public services or for matters delegated by the Communities, i.e. by the French Community or the Flemish Community established on the federal level. Moreover, when exercising their power to make regulations, both commissions are submitted to the administrative supervision of the Flemish Community and the French Community. The power of the Community Commissions of Brussels is therefore not only a limited one, but also a subordinated one with regard to the Flemish and French Communities. These restrictions mainly fulfil the wishes of the Flemish Movement anxious to consolidate the links between the Dutch-speaking inhabitants of Brussels and the Flemish Community at large with the aim to consolidate the Flemish presence in Brussels.

In this connection, one should note that the powers of the French Community Commission and those of the Flemish Community Commission show a typical asymmetry since the constitutional revision of 1993. Article 138 of the Constitution indeed foresees the possibility for the French Community to transfer some of its legislative powers to the French Community Commission, as far as they concern the Brussels Region. This is not the case for the Flemish Community. Thus contrary to the limitations imposed on the power of the Flemish Community Commission which are based on the above mentioned political reasons, an extension of the autonomy of the French Community Commission has been made possible. When it exercises these transferred powers, the French Community Commission no longer acts as a subordinated authority, but as a federal entity having the same normative powers as the Communities and the Regions. Thus this reform has reinforced the autonomy of the French-speaking inhabitants of Brussels.

With regard to the principle according to which the Community matters are the object of separate powers, exercised in an independent way by distinct authorities, the existence of the Joint Community for Community Matters appears as an exception. One knows that its creation results from the fact that the Flemish and French
Communities are competent only with regard to institutions which are located in Brussels and not with regard to people. Its creation also results from the fact that both Communities are not competent with regard to institutions which are located in Brussels but which cannot be considered as belonging exclusively to either of these Communities. These institutions, which escape the power of the Communities, belong either to the area of cultural matters or to the area of matters relating to individuals (personnalisables). The first ones, called "bicultural" (biculturelles), are ruled by the federal State, whereas the second ones, called "bipersonnalisables", depend on the Joint Commission for Community Matters in Brussels. In these matters, the Commission is competent with regard to persons and with regard to institutions, which in virtue of their organisation cannot be considered as belonging exclusively to either of the Communities. The Commission has also powers concerning local matters, which are of common interest to both communities.

The authorities of the Joint Commission for Community Matters are essentially composed of the same representatives as those of the authorities of the Brussels Capital Region. Thus the Joint Commission for Community Matters also appears as a place of co-operation where power is jointly exercised by the representatives of the two communities living in Brussels.

However, because of the limits of its powers, we must note that, apart from budgetary ordinances, the joint assembly of the Joint Commission for Community Matters has only adopted a very small number of ordinances since 1991. These ordinances concern areas such as assistance in acts of the daily life, the development of an annual report on poverty in Brussels by the CPAS (Public Centres for Social Assistance), the creation of an advisory board for health and public aid, establishments for senior citizens, and rules concerning the CPAS. Therefore, the result of the co-operation in the Joint Commission for Community Matters between the representatives of the French and the Flemish communities of Brussels seems to be rather limited.

The legitimacy of the dualism Region/Community and in particular the legitimacy of the Community institutions should be judged with moderation. Indeed the will to ensure a political autonomy for communities based on linguistic and cultural criteria presents an ambiguity. This wish reveals the influence of what we could call, following E. Gellner's terminology, the principle of nationalism. This principle requires that any cultural Community forms a political body whose limits correspond to the limits of that Community. It also requires that the political authorities and the citizens belong to one and the same Community of culture. The principle of nationalism implies that the political power should be the instrument to safeguard the existence of a Community whose nature and limits are supposed to be a priori determined by the cultural belonging of its members. Associated with the modern concept of the territorial State, the nationalist principle leads to claim the formation of political institutions which, while being based on a cultural Community, will exercise an exclusive power over the members of this Community within the limits of a well-defined territory.
At least three objections can be raised against this conception\(^{14}\). First of all, as far as its implementation is concerned, this conception goes against the fact that in reality the people who will become members of a political Community generally belong to different cultural communities. Thus the implementation of the nationalistic principle inevitably creates difficulties originating from the existence of different cultural groups and in particular from the existence of cultural minorities within the political Community.

Secondly, the principle of nationalism wrongly implies the existence of a pre-existing Community of culture whose limits are determined a priori. In fact, even if it can be supported by some cultural features, the idea of a homogeneous cultural Community longing for autonomy is not so much the expression of a pre-existing reality as it is the result of an historical construction in which the claims of national movements play a decisive role.

Finally, the idea of a quasi-organic cultural Community whose preservation would be an end in itself does not seem very compatible with democracy and in particular with the principle of equal dignity for all individuals. This principle makes all divisions problematic, whether they are economic, religious, ethnic, cultural or sexual, in what name one would try to justify inequalities of treatment and particularly inequalities regarding the political participation of citizens.

However, this critical examination of the nationalistic principle may not lead to completely brush aside the cultural dimension of democratic autonomy. From the point of view of democracy, the belonging of individuals to a cultural group does not constitute the basis for organic communities. But democracy requires protection of and respect for all different cultures. For several reasons, I am not able to examine in detail here, the cultural background of the individuals determines their capacity to make up their opinions and preferences. Therefore, it appears as a condition of their collective autonomy or their participation in the common power. Moreover, if one admits that, as a consequence of the principle of equality, the individuals must be able to benefit from equal opportunities to participate in the collective autonomy, one must also admit that democracy implies the mutual recognition and equality of the cultures to which the citizens belong. These principles permit to justify, among other things, the creation of mechanisms aiming to protect cultural minorities within democratic society, and in general the cultural groups that are being dominated. The main function of these mechanisms is to distribute in a more egalitarian way the possibilities to participate in the collective power. They can also guarantee those groups a certain degree of autonomy in the administration of their specific interests. But contrary to the nationalistic principle, these mechanisms do not require any cultural homogeneity of the citizens or cultural identity of the government and the people.

It is in the light of these brief considerations that the interest of the Brussels situation is revealed. Indeed, the political organisation of the Brussels institutions appears to be a compromise between the above-mentioned principles, i.e., between nationalism and democracy.

On the one hand, if one judges by the role played by the French and Flemish Community Commissions, as well as the Flemish and French Communities
themselves, the institutions of Brussels seem to correspond to the nationalist principle. These institutions aim to provide presumed culturally homogeneous groups with political autonomy. On the political plane, the homogeneity of these groups is both guaranteed and expressed by the existence of unilingual lists of candidates.

On the other hand, both the regional powers that have been attributed to the Council and the Government of the Brussels Capital Region and the limited Community powers that have been devolved to the Joint Commission for Community Matters imply that these powers are to be exercised jointly by representatives of the two cultural communities that live in Brussels. Therefore, these institutions do not correspond to the nationalist principle because they institute a co-operation between two different communities living within the same political body.

Moreover, the principle of nationalism is also questioned by the Brussels institutions as far as they are not based on the existence of two sub-nationalities which would be assigned to the inhabitants of Brussels, who belong either to the French Community or to the Flemish one. While it ensures the greatest freedom for people, as regards the choice of schools or health care, for instance; this absence of sub-nationalities reduces the importance of the social division between the French and Flemish inhabitants of Brussels. However, we have seen that this division is maintained on the political level by the obligation to present the candidates for the regional elections on separate unilingual lists.

Finally, the co-operation between communities satisfies the democratic requirement of equal participation because it is based on provisions which protect the Flemish minority of Brussels. The following guarantees can be mentioned:

- a preliminary distribution of the seats of the Regional Council between the lists of the French-speaking candidates and the lists of the Dutch-speaking candidates (Art. 20, par. 2 of the special law of 12 January 1989);
- the president and the first vice-president of the Regional Council must belong to different linguistic groups, while at least one third of the members of the Committee of the Council must belong to the linguistic group which is less numerous (Art. 27);
- the less numerous linguistic group must be represented in each commission of the Council (Art. 28);
- with the exception of its president, the regional government, which comprises 5 members, is composed on the basis of an equal representation of the French and Dutch linguistic groups (Art. 34);
- the French and the Flemish members of the government can be elected by their own linguistic group (Art. 35, par. 2);
- the members of the government, who belong to the less numerous linguistic group, have the guarantee that they will obtain specific powers (Art. 37).

Besides nationalism, Brussels' institutions challenge another principle which has determined the organisation of modern political bodies: the principle of "territoriality". Of course, the political bodies established in the Brussels Region, be it the Region itself, the French and Flemish Community Commissions or the Joint Commission for Community Matters, have their powers defined by the territory of the administrative arrondissement of Brussels-Capital. This one corresponds to the 19
municipalities established in the conurbation. And one knows that the question of the external limits of the Brussels Region was one of the most difficult political problems to be solved because of the conflicts on this subject between the French and Flemish parties. It is precisely this problem which was one of the main reasons for the delay, which lasted 18 years, in the creation of the institutions of the Brussels Region.

Nevertheless, despite the importance of the external limits of Brussels, one can see that the principle of territoriality is called into question, at least to a certain extent, by the institutions of Brussels and in particular in the field of Community powers. Two specificities should be noted in this respect.

First, we have seen that although they apply to the Dutch-speaking Region or to the French-speaking Region in the first place, the decrees of the Flemish Community and those of the French Community also apply to the bilingual Region of Brussels, i.e. to the institutions which can be considered as belonging exclusively to either of these communities. Secondly, it is important to note that the powers of the authorities of the French Community Commission as well as those of the authorities of the Flemish Community Commission have not been defined by reference to a territorial division within the Brussels Region. In other words, the Brussels Region has not been subdivided into two restricted territories which each would limit the powers of the French and Flemish Community Commissions respectively. Such an internal division of Brussels, according to an "ethical" or Community cleavage, would have been inconceivable because the members of the two communities do not reside in distinct areas of the Region.

From this point of view, the French and Flemish Community Commissions of Brussels, as well as the Flemish and French Communities on the federal level, appear as political bodies based on the idea of regrouping people on the basis of their cultural and linguistic background. As such, these political bodies do not have a well-defined territorial foundation and they appear as one of the most original constituents of Belgian federalism.

3. Towards a possible transposition?

In conclusion, I would like to make some remarks on the possibility to transpose the institutional model of Brussels to Jerusalem. Obviously, the situation of both cities is quite different in social and political terms, not to mention cultural, symbolic and religious significance. From a political point of view, Jerusalem is one of the most difficult problems in the conflict which has opposed Israelis to Palestinians for more than fifty years. Thus the solution of Jerusalem's problem will depend on an international agreement between the conflicting parties. Now one can presume that such an agreement could not be reached without a mutual recognition of the rights of both parties as regards Jerusalem. Besides the interests of both states, i.e. the State of Israel and the future Palestinian State, the existence of the Israeli and Palestinian communities which live in Jerusalem will have to be recognised.

This mutual recognition might lay the foundations of a new status for Jerusalem. In this respect, it seems to me that the institutions of Brussels might be a useful point
of reference as far as they juxtapose, on the one hand, common authorities which
exercise powers in matters of common interest, and, on the other hand, separate
authorities which provide each Community with a certain degree of autonomy in
specific domains.

From this point of view, Jerusalem might be given common authorities which
would represent, through an electoral process, the Israeli and Palestinian inhabitants
of the city. Like the regional authorities of Brussels, these authorities might have
powers in matters of common concern. Thus the two communities would share
power in these matters. Several mechanisms of minority protection, comparable with
those used in the Brussels Region, might be adopted in this field.

Besides these first authorities, the Israeli and Palestinian communities might
have their own authorities which would exercise autonomous powers in matters of
special interest for each Community.

However, apart from these basic principles, one can presume that the
transposition of the Brussels' model will meet serious obstacles. First of all, as a
result of the high degree of political polarisation in Jerusalem, the solution of the
absence of two (sub-) nationalities in Brussels does not seem to be applicable to
Jerusalem.

Moreover, as regards the organisation of the Israeli and Palestinian communities
of Jerusalem, the question of territoriality seems to be very problematic. The question
is whether apart from its status as a city in which two communities exercise some
powers in common Jerusalem will experience an internal division of its territory along
national or Community lines. If, for instance, the Israeli claim for indivisibility of
Jerusalem were accepted, the solution which consists in setting up non-territorial
political units, following the example of the French and Flemish communities of
Brussels, might be considered. This option would have the advantage of facilitating
the solution of the problem raised by the settlement of Israelis in East Jerusalem. Yet
I doubt that the claim to the indivisibility of Jerusalem could be accepted in any
negotiation between Israelis and Palestinians since the issue of territory and of the
settlement of Israelis in East Jerusalem is so hotly debated. Therefore, one can
presume that the political bodies corresponding to the Israeli and Palestinian
communities of Jerusalem will be organised in a more traditional way, i.e. on a
territorial basis. Whatever the case may be, the creation of territorial or non-
territorial political bodies within Jerusalem will depend on a balance of power in the
future negotiation on the status of Jerusalem.

Notes

1 See e.g. Lapidoth, R. 1995. ‘Redefining Authority. The Past, Present, and Future of Sovereignty’,


7 See art. 127, § 2 and 128, § 2 of the Constitution.


9 See Article 17, § 1 and 2 of the special law of 12 January 1989 regarding the Brussels institutions.

10 See also about the content of cultural and personal (personnalisables) matters articles 4 and 5 of the special law of 8 August 1980 about the institutional reforms.

11 See articles 64 and 65 of the special law of 12 January 1989 regarding the Brussels institutions.


14 See on this point Gérard, P. 1995: 221-227.

15 See articles 2 and 62 of the special law of 12 January 1989 regarding the Brussels institutions.
THE LEGAL STATUS OF BRUSSELS AND JERUSALEM:
FROM COMPARISON TO TRANSPOSITION?

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Introduction: resemblances and differences

In many respects, Brussels and Jerusalem seem to have common features. Both are mixed cities, the capital (established or claimed) of different authorities, a city on which several communities have concurring, if not antagonistic ambitions. These few similarities may, however, not hide the great differences between both cities. In short, six main differences can be pointed out. First, and above all, Brussels has never been, neither historically nor today, a place of violence like Jerusalem unfortunately has been.1 Secondly, Brussels has been granted legal status since 1989. Needless to say that the status of Jerusalem is still uncertain and will have to be definitively cleared. Thirdly, Brussels is integrated into a federated state - Belgium - made up of three communities (the French Community, the Flemish Community and the German-speaking Community) and of three Regions (the Walloon Region, the Flemish Region and the Brussels Region). Thus, the legal status of Brussels is merely a Belgian national, legal concern. As Jerusalem is the subject of a conflict between a State -Israel- and an administrative authority -the Palestinian National Authority (which desires to become a state)- the resolution might be found, in legal terms, at the international law level (i.e. confederation, condominium) instead of any national law level (Israeli or Palestinian). Fourthly, Brussels has to deal with a linguistic problem and with the fact that many people within the City are not bilingual. In Jerusalem there is no similar question. Fifthly, on a geographical level, Brussels is not divided in clear-cut areas along the linguistic divide between Flemish or French-speakers. Though Arabs and Jewish both want Jerusalem to be unified and undivided, it is de facto a divided city. Finally, we must keep in mind that Brussels, contrary to Jerusalem, doesn't have the privilege (or the disadvantage) to gather sacred places of three great monotheistic religions. Therefore there is no religious quarrel in Brussels.

This paper is not aimed to discover the quadrature of the circle by offering a definitive, ideal and equilibrated proposition concerning the status of Jerusalem. Many propositions have already been made in such a perspective.2 The goal of the present work is to answer the following question: despite the differences mentioned above, can the legal system and the solutions that have been applied in Brussels since 1989 be useful to resolve part of the Jerusalem problem? This question rises from the reading of the proceedings of the first Israeli-Palestinian international academic seminar on the future of Jerusalem.3 Jos Chabert, Minister for external relations of the Region of Brussels-Capital, presents Brussels as an inspiring 'model'.4 To elaborate this question, we must examine if, why, and to what degree Brussels is a 'model'. This is the main issue, in order to cast light upon the actual limits and possibilities of the considered transposition. We must also keep
in mind that an evaluation of the Brussels ‘model’ should include the more general question of the protection of linguistic (or ethnic) minorities located in a different linguistic (or ethnic) Region. In Belgium, this question is solved by several legal rules conferring linguistic rights, called ‘facilities, to such a minority’. In a number of municipalities that surround Brussels, but that are territorially situated in the Flemish Region, there are specific linguistic rules applicable to the French-speaking minority.

1. Brussels as a model

As Ms. Demo demonstrates in her description of the Brussels institutions, there is no single legal status in Brussels. Instead, there are several which combine territorial and person-related factors. At first (and this was the most difficult question to solve), the territorial limits of the Brussels Region had to be defined. This had to be done in order to clearly define the territory over which the Brussels Parliament and Government would exert their so-called ‘regional competence’ (i.e. urban planning, transports, environment, organisation of the regional economy, housing, etc.). Concurrently, the so-called ‘cultural’ and ‘person-related’ issues have been shared between:

- the Joint Community Commission for the person-related issues, that concern both communities;
- the French Community Commission (COCOF) for the French cultural and person-related issues;
- the Flemish Community Commission (VGC (in Flemish) or COCON (in French)) for the Flemish cultural and person-related issues;
- the Federal State for the bicultural issues, which cannot be reattached to one or the other community.

The above mentioned authorities exercise their legal authority towards institutions and not towards persons. The Brussels inhabitants are indeed free to address themselves to the institutions of their choice, be they French-speaking or Flemish ones, since there is no Flemish or French-speaking sub-nationality. For example, no one has a particular interest to be treated rather in a Flemish than in a French-speaking hospital, or vice versa. There is no real competition between Flemish and French-speaking services.

During the past eight years of activities, the shared sovereignty system has been working rather well, without any legal major crisis or clamping (1.1). Of course, once in a while some friction and difficulties have appeared, but always on a political and not on a legal level (1.2). This is quite normal and it would be the case for any institution, but in the Brussels situation it is really remarkable. Three different factors - history, organisation and supervision - seem to make up the key of this success.

1.1. The historical and methodological factor

Almost 20 years, from December 1970 to January 1989, were needed to enact a Belgian law concerning the Brussels institutions. Different provisional systems were elaborated and temporarily applied in 1970, 1974 and 1979. These systems dealt with
territorial, institutional and financial problems. Looking at them in retrospect, it appears that the definitive solution of today is a combination of continuity (ex.: the territory, limited to the 19 municipalities, remained unchanged) and ruptures (ex.: the Flemish idea of Brussels as a common territory to the two main communities of the State was abandoned for a status of Brussels as a third Region within the federal State, parallel to the two existing Regions).

It is now clear that some of the provisional solutions have become definitive (ex.: the territorial limits of Brussels) and that every solution could only be reached by legal and political concessions. In every case, a time of sedimentation or maturation of the institutional solutions seemed to be necessary. One must be aware that during that time it is vain to hope that a real policy of managing the economic, social or cultural aspects of the city can be developed. In other words, the Belgian history shows that the time needed to settle the Brussels status is time that cannot be dedicated to solve the non-institutional problems. When we take into consideration the method of conflict management, it appears that the aim of the negotiations was to (partially) satisfy each party through pragmatic discussions, solving friction without violence and accepting that the solutions would necessarily be very complex ones.14

1.2. The institutional factor

A double organisational key explains the working of the Brussels institutions. First, as Joël van Ypersele showed in one of his papers, the co-existence of regional and community institutions in Brussels must be understood in relation to the communities’ counterparts in Flanders and Wallonia, that make up the Federal State (i.e. the French Community and the Flemish Community). These relations can vary from one of total dependence to one of (more or less) autonomy (note the difference between the Flemish Community Commission towards the Flemish Community and the French Community Commission towards the French Community). Nevertheless, sometimes it is a common regional interest that pushes Flemish and French-speaking habitants of Brussels to join forces. Co-operation between both Brussels’ Communities is necessary in order to valorise their city and Region with regard to the two others regions of the country (i.e. the Walloon Region and the Flemish Region). To put it in a other way, the inhabitants of Brussels sometimes privilege their cultural membership (Flemish or French), sometimes their territorial localisation (all are in Brussels), without any actual contradiction.15

The dissociation of authorities that manage, in full autonomy, cultural and person-related issues on the one hand, and authorities for regional issues on the other hand, offers the possibility to reach different goals at the same time, i.e.:
- a regional autonomy equivalent to the one of the others regions;
- a link in cultural and person-related issues between each Brussels community and his community counterpart in Flanders and Wallonia;
- a co-management of the person-related issues that belong to both communities and of the so-called ‘bicultural’ issues.

Secondly, the whole system has been organised in such a way that one Community in Brussels can not take any decision on regional and common person-related issues,
without the consent or against the will of the other Community. Both communities are obliged to work together, to reach an agreement or at least a consensus before passing a new law or regulation. In fact, this situation is the result of different provisions aimed at protecting the small Flemish minority in Brussels.\textsuperscript{16} Although there is no specific rule that warrants the Flemish population a certain number of seats at the Brussels Parliament, several provisions are made to settle their representation in the Brussels Regional Council and in the Brussels government. For the elections of the Brussels Regional Council, there are no bilingual electoral lists allowed. Every candidate must choose to belong to one of the two linguistic groups.\textsuperscript{17} This choice is binding and definite. After the elections, the less represented linguistic group is entitled to at least a third of the members, making up the different authorities of the Brussels Council.\textsuperscript{18} In every commission of the Council, the same minority group must always be represented.\textsuperscript{19} Also, the regulation applicable to the Brussels Council must be voted by a majority in both linguistic groups. Before the vote of a law an ‘alarm bell’ can be used. This mechanism consists of a motivated motion signed by at least 3/4 of the members of a linguistic group declaring that a draft of law might seriously damage relations between the communities. In this case, the parliamentary procedure is suspended and the motion is referred to the Government which, within thirty days, gives its advice or, if needed, can amend the draft. This advice is sent to the Brussels Regional Council for a vote, both on the amendment and on the whole draft.\textsuperscript{20} However, until today, the ‘alarm bell’-procedure has never been used, which is a remarkable thing.

At the Government level there is a provision that stipulates, in case of a lack of consensus, how the different ministerial tasks should be divided.\textsuperscript{21} This stipulation should ensure an equal political weight for every minister. Furthermore, every decision on a Government-level must be taken by consensus. Even if the French members of the Government are the majority (3 out of 5 deciding members), they must always reach a common agreement with the Flemish members. Concerning the political responsibility, a member of the Government can only be dismissed by the majority of the linguistic group he belongs to.\textsuperscript{22} Finally, on the administrative level, the same linguistic equilibrium is systematically respected: linguistic lists are applied in every administration (police, etc.), every managerial public office must directed by a person from one linguistic group, to whom is joined a vice-director from the other group, etc.

1.3. Supervision

The most well-conceived institutions and regulations need to be supervised in one way or another. In this respect, not only has the status of Brussels been legally ‘crystallised’, it is also controlled judicially and politically by jurisdictions or authorities that are made up on the basis of a linguistic equilibrium or linguistic parity. More precisely, it is remarkable that the status of Brussels, enacted in 1989, can only be modified by a special majority law\textsuperscript{23} adopted by the Federal Parliament. Indeed. In 1993 some ‘constitutive autonomy’ was given to the other Regions of the federal State in order to decide - to a certain extend - themselves over their composition and working procedures. This possibility was however refused to the Brussels Region, considering the will ‘to
maintain a stable balance compatible with the vocation of Brussels as a Capital and the bilingual character of the Region". 24

Thus, as a (difficult) compromise had been reached in 1989, it seemed wiser neither to change its stipulations, nor to give to the habitants of Brussels the possibility to do this themselves. On the judicial level, the Court of Arbitrage, i.e. the constitutional court of Belgium, and the Conseil d’Etat, i.e. the highest administrative Court, are composed on a linguistically equal basis. Both linguistic groups are thus obliged to decide together when some rules enacted in Brussels (by the Parliament or the Government) are submitted to their proceedings for annulment. This judicial supervision diminishes the risk of legal tensions between the communities of Brussels. On a political level, the Federal council of Ministers, which is composed of an equal number of French-speaking and Dutch-speaking ministers, may also supervise the decisions of the Brussels authority, if these do not respect the international vocation of Brussels.25

2. Why the ‘model’ is hampered

On several occasions, the Brussels institutional system has been presented as a ‘model’. However, the mechanism doesn’t always run that smoothly. Some of its deficiencies cannot be overlooked. In short, the consensus-rule on the Government-level makes the decision-making process sometimes difficult and inefficient. Moreover, the existing status of Brussels and the imposed co-operation between the French-speaking and the Flemish-speaking does not avoid a struggle of influence between both communities to ‘possess’ the City by different means. As exposed above, the French-speaking majority of the Parliament can not vote a law that, explicitly or implicitly, damages the interest of the Flemish Community. If so, the ‘alarm bell’ will ring. This protective mechanism seems to work in a preventative way, which explains probably why the ‘alarm bell’ has never rung.

The compulsion to decide by consensus on the Government-level, guarantees a stronger bargaining position to the Flemish minority. In fact, the consensus-procedure implies a possibility to veto decisions by the Flemish minority. The procedure thus carries with it the possibility of a deadlock. The consensus rule means that everyone must, in case of disagreement with a decision, comply with it or resign. During the 7 years of functioning of the Brussels Regional bodies, this extreme consequence of resignation has however never occurred. This doesn’t mean that everything always ran smoothly. In the summer of 1992, a serious linguistic problem arose concerning a new structure for the management of the public hospitals in the capital. The functioning of the Government has been suspended for a few weeks, but finally an agreement was reached.26

The ‘joint decision making’ is thus an instrument that leads to the ‘compulsory miracle’ as once said the Minister-President of the Region of Brussels.27 Co-decision - forced or unforced- is, however, not equal to strict solidarity. The system cannot avoid that a member of the Government creates difficulties that affect his colleagues in general.28 Since the political responsibility of the Government is partitioned - a minister is only responsible towards his own linguistic group in the Parliament - a lack of solidarity may arise. Problems of solidarity have occurred in February 1996, following an initiative of the French Community towards the French-speaking population located in Flanders, especially
in the so-called municipalities with ‘facilities’ for the French-speakers that surround Brussels. Consequently, friction over Regional issues in Brussels seemed to be ‘contaminated’ by the conflict between the two communities.  

Finally, though Brussels has not been divided - it is on the contrary managed in common - it remains a target of rivalry. The capital Region engenders a struggle for influence between both communities. The Flemings still want to increase their influence: not only has Brussels been declared the Capital of the Flemish Community and have political debates about Brussels been taken place, especially in Flanders there is some campaigning to convince people to come to live in Brussels as Flemings, to study in the Flemish educational system, etc. At the same time different kinds of investments are made (Flemish Parliament, administrative buildings located in certain areas of the town, etc.) in the capital Region. It is true that on the opposite side the French community does the same thing. But the campaigning is less, since the Francophones have a great majority (+ or - 85%) in Brussels. This communal ‘struggle’ is a passive one, but on a linguistic level it is an important one. In July 1996 for example, the touristic policy of Brussels has been completely divided. Parallel actions are now undertaken by both communities to promote Brussels abroad.

Despite this division and dispersion of forces, money and energy, it seems that for every job (important or not) in Brussels today, bilingualism is more and more required. This signifies that the Francophones should soon or later also speak Dutch. Will this evolution engenders a new type of Belgian in the country - the bilingual ones, who actually are rather a minority? This situation would correspond to the official law that declares Brussels to be a bilingual Region. Such a situation would be very different from today's reality. If a genuine bilingualism would be the case in the future, the question of Brussels might be definitively solved, but in a way that was not predictable eight years ago!

This brings us to our final remarks.

Final remarks

Can Brussels be a model? The question is probably not the most pertinent one to answer, in view of our attempt to compare Jerusalem and Brussels. As to the ‘Belgian question’, Brussels is probably a kind of model, but this only goes for the Brussels context. In other words, the Brussels institutional system is of course not transposable as such to Jerusalem, but it can be a source of inspiration. If we consider the communal struggle over the capital Region from a historical perspective, Brussels certainly is a model solution. Since 1989, the young Brussels institutions have achieved their goals: as recently said, the ‘bet of loyalty’ laid down within these complex institutions has been won, at least for the moment. Of course, one cannot say that the actual solution is a definitive one, because there are some dangers for deadlock in the mechanism, especially if linguistic groups refuse to work together or have antagonistic views. Today the willingness for dialogue, collaboration, solidarity (only to a certain degree, though!) and search of compromise seems to be an overriding element. However, everyone is aware that a lack of loyalty would be the end of the Region and probably the end of Belgium as a country.
This 'Brussels-Belgian model' is thus not transposable as such to Jerusalem. Not because the model is no good, but because of the differences in context between both situations.

If one day the (political) context would favour a legal solution for Jerusalem, the questions to be solved will be similar to the Brussels's ones. At that moment one might admit that some of the Brussels solutions and institutional mechanisms can be fruitful to Jerusalem.

Notes


5 The legal system which results from these rules could perhaps be considered when studying the problem of the Jewish settlements. This question exceeds the simple comparison between Brussels and Jerusalem.


7 I.e. Social aid to the 19 Brussels municipalities, private social services not acknowledged by one or the other Community, etc.

8 Theater, cultural associations, cultural centers.

9 Health, youth protection, disabled people, etc.

10 Ex.: The National Opera, The Fine Arts Hall, etc.

11 Except that in a French-speaking hospital, doctors are Francophone and that the atmosphere of the hospital is more French-speaking (books at the library, etc.), and vice versa for a Flemish hospital.


17 Art. 17, § 1er and § 2 of the special law concerning the institutions of Brussels (12.01.1989); adde. C. Appeal Brussels, 1st May 1995, unpublished.

18 Art. 27, § 3.
19 Art. 28, al. 3.
20 Art. 31.
21 Art. 37.
23 Belgian Constitution, art. 39.
25 Art. 45. of the special law concerning the institutions of Brussels.
28 See the declaration of the President of the Flemish ‘Voksunie’ about the necessity for Flanders to integrate Brussels into the Region, if the Belgian State would disappear. These declarations where approved by the Volksunie Minister of the Brussels Government. The Franophone opposition of the Parliament wanted to impeach him, which was legally impossible. See: 1992. Le Soir. 14-15-16 Aug.: 6; 1992. 23 Aug.: 16.
29 See J. van Ypersele about the effect of this initiative.
30 Decree of the Flemish Community, 6 March 1984.
31 See B.V. Vlaams Parlement, 23 May 1996, 48, 95/96, i.e. the report of the discussions in the regional Flemish Parliament about ‘Flanders and its capital, Brussels’.
33 See the contacts between the President of the Brussels Region and the President of the Walloon Region. See: 1996. Le Soir. 21 Nov.: 6.
34 See: 1996. Le Soir. 2 Jul.: 1; 3 Jul.: 3 and 20; 6-7 Jul.: 2; 15 Nov.: 18.
37 See: 1996. Le Soir. 28 November: 3. about the ‘linguistic courtesy agreement’, which has been qualified as a ‘miracle’ and as an ‘essential example’ for the rest of the country.
CONFLICT AND CONFLICT MANAGEMENT
FRONTIER CITIES: A MAJOR STAKE AT WORLD LEVEL

Joël Kotek (ULB)

Introduction

Under the weight of modernity, the intensification of migratory flaws, the spreading of information, and, above all, the development of new, often supranational, solidarities, the Twentieth Century was to do away even with the very notion of territory. In reality, it did not happen. Although ‘without frontiers’ is much in fashion, the control of space and territories is still very much one of the major issues that mark the end of the century at World level.

In Europe, the paradox is only apparent if one considers that the end of the last multinational empire lead, both in the East and in the West, to a return to nations, and, therefore, to History or, rather, national histories necessarily partial and mythical. It is the national memory, with its baggage of victories and defeats, the ‘grandeur’ and the humiliations, that dominates debates. Only a step separates the celebration of national history from the celebration of a nation’s geography, which in its turn leads to the territorial issue. More than ever the future of certain nations seems linked to the possession of ‘memorial sites’, considered as vital. Wars erupted, or will erupt, all over the world for the possession of one or another morsel of land. From Transilvania to the Cashemir, from the Brabant to the West bank, territories are objects of passions all the more dangerous as they appear as existential. In the words of Bertrand Badie: ‘war and peace, international order and disorder are all contained in the ambition to draw and redraw the fragile maps of the world’.

Well beyond the fall of Communism, it is naturally in the notion of nation-state that one finds the explanation to the current territorial contentions. The geographer Gilles Sautter rightly pointed out that: ‘frontiers refer to the state ... to the very notion of the modern state that needs linear frontiers to exist’. It goes without saying that as far as the modern state is concerned, the sensitivity to territorial issues will be all the more raw if it is associated to the notion of ‘ethno-nation’. Considering that the goal of most of the new elites, whether they are national (Croats, Slovaks, or Romanians), or regional (Catalan, Quebecker, Flemish), is to build precisely nation-states inspired by the French model as far as the State is concerned (centralised and with so-called ‘natural’ borders), but Germanic with regard to the nation (‘ethnically’ if not culturally homogeneous), the least that one can say is that the future looks menacing. Two cases in Central Europe are classical: former Yugoslavia and Czechoslovakia. In Western Europe, the least that one can say is that the dissociation process currently under way in Belgium is fundamentally due to the same causes: the absence of a common feeling of belonging, the rejection of institutional forms of co-existence and collective solidarity, the will to create a unitarian state, essentially based on a linguistic and cultural identity. In other words, once again resorting to Girardet's formula, to make the principle of Ethnic unity coincide with the legal and political definition of the
nation-state, and the cultural specificity coincide with the political space. The problem is that between dreams (a mono-ethnic national territory) and reality (areas with mixed and/or minority populations) there is a very large distance, hence the tensions generated around mixed areas, in other words ‘frontier cities and regions’. These frontier-cities (Belfast, Hebron, Brussels, Targu Mures) or frontier-regions (Crimea, Ulster, Transilvania) are as many sources of difficulties for the regions and nations aspiring to the status of nation-state, whether ‘classical’ or ‘Germanic’. Michel Foucher stressed that tensions and conflicts are generated to a good extent by the mismatch between state borders, increasingly defined and rigid, and other containing categories such as: economic, religious, historic, or mythical categories bearing political relevance.

1. What is a “frontier city”? An attempt to define it

   It is for a specific reason that I use the notion of “frontier-city”, rather than other terms such as “polarised”, “multi-cultural” or “multi-ethnic” cities. I trust that this term qualifies most adequately the complex reality of cities like Brussels, Cluj, Jerusalem, Srinagar and others - one of the objectives of this paper is to demonstrate it.

   I call frontier-city (or frontier-region) all cities (or regions) that are not only polarised on an ethnic or ideological basis (cf. Berlin during the Cold War), but are, above all, disputed because of their collocation on fault-lines between ethnic or ideological wholes. In doing so, the term “frontier” itself is pertinent. Michel Foucher stressed that both in English and French the word ‘frontier’ contains the notion of ‘front’, hence, confrontation. Considering that frontier-cities are above all places of confrontation ... In the case of Brussels the confrontations is, obviously, largely symbolic ... the confrontation is still real. Jerusalem is today as much a place of exchange, as it is of confrontation.

2. Frontier as a disputed area

   Frontier-cities are above all disputed places because they are subject to contradictory and opposing claims. The haps of history have created areas with mixed populations whose sovereignty is necessarily contested. Frontier-cities are most of the time bi-national. Jerusalem, the cradle of all three main monotheist religions, is a frontier as it opposes two equally legitimate nations. The notion of double legitimacy is, in my view, fundamental. Whom does Brussels belong to? Naturally to its francophone majority, which accounts for more than 85% of the population, but also to its Flemish minority in the light of its Flemish past. The right of peoples’ to self-determination (a principle of democratic legitimacy) may be opposed to historic rights (historic legitimacy). Brussels is therefore not only the triple capital of the Belgian Federation, of francophone Belgium, and of the Brussels Region, but also of the Flemish entity. Situated on the fault line between the Latin and Germanic world, Brussels opposes, peacefully of course, the majority of its francophone citizens to the Flanders Region that wishes to take control over it.
As it is, above all, a question of sovereignty, one can understand why the notion of frontier-city cannot be mistaken with the notions of multi-cultural, pluri-ethnic or multi-ethnic cities. All modern cities, from Paris and London to New York, are multi-cultural in the sense that they pool together diasporas and populations of immigrant origin, in other words they are places of cultural exchanges and melting. All modern cities put in contact so called native populations with populations of Foreign origin, always recognisable as such but destined to be civically integrated. Frontier-cities in their turn deploy two equally legitimate groups both claiming specific rights to the city one against the other, and this without any reference to the demographic context. In frontier-cities, the minority is not a minority because of its essence, like in multi-cultural cities, but because of historic or demographic contingency. For example, the Treaty of Trianon turned the majority Hungarians of Bratislava and Cluj into the Magyar minority. The gist of the problem of frontier-cities is neither cultural, nor linguistic or religious - it is essentially political. Their minorities are not condemned - nor do they want - to integrate.

Although the notions of frontier-city and multi-cultural city do not coincide, a city can be both at the same time, such was the case of Wilno between the two World Wars. It was not its strong Jewish community that made it a frontier-city, but the antagonism between Poland and Lithuania, two states that emerged from the dissolution of the Russian Empire. It was in the name of history that the Lithuanians (Vilnius was their Capital in 1322), who in 1919 accounted for less than 5% of its total population, logically chose it as their Capital. Just as logically, the Polish took it over forcefully in October 1920, strong of their numeric and cultural superiority (wasn't the city the birthplace of the Polish national poet, Adam Mickiewicz?). In this triangular confrontation, the Jews, a minority by definition, aspired only to social and legal equality, and the respect of their cultural specificities: Wilnê was the intellectual, but also revolutionary Capital of Yiddisland. The case of Czernowitz, another cultural cradle of the Jewish world, is even more interesting in as much as the Jews constituted its absolute majority. It was the Austrian, Romanian and Soviet territorial pretensions that turned this city (today in Ukraine and sadly homogenous) into a frontier-city. It has to be said that Brussels and Jerusalem are multi-cultural cities - the Belgian Capital has a 30% population of foreign origin - and frontier-cities in the light of their dual-community character.

It also has to be stressed that the notion of frontier-city does not fully coincide with the notions of multi-ethnic or polarised cities. A multi-ethnic city is not necessarily subject to opposing claims. Suffice it to think of the classic cases of the cities of diasporas - the Alexandria of Lawrence Durell, for example, where Egyptians, Jews, Greeks and Italians lived next to each other - or of the cities of Central Europe where Jews were often the numeric majority. In Alexandria, just like in Brest-Litovsk, inter-ethnic conflicts, often violent, were not for the control of the space. Or Montreal, for instance, a polarised city if ever there was one. The 'reawakening' of Quebec, superimposed on an unfavourable geographical context, precludes the anglophone population from claiming it from the francophone population. The same applies to Miami, and this in spite of an uninterrupted process
of hispanisation. The population of Cuban origin, that in 1992 obtained bilingualism for the district of Miami, does not aspire to detaching it from the United States.

Another important difference should be stressed: polarisation is not always ethnic. Frontiers may also oppose different ideological structures. This was the case of the demarcation zone between the Ottoman Empire and its Russian and Austro-Hungarian rivals. The same happened during wars of religion. It was not by coincidence that Martin Luther chose the term *grenzze* when referring to the political and religious rivalries of his century. The question of Alsace-Lorraine follows the same line. As it was at the time demonstrated by Renan and Fustel de Coulanges, opposing Mommsen, it was a political and not an ethnic issue. The most recent example of a non-ethnic frontier-city is that of Berlin. The former Capital of the Reich, became frontier from 1947 to 1989, in as much as it was bitterly contested by two vehemently antagonistic systems. The example of Berlin, an ideological shopwindow and geopolitical frontier at the same time, adequately illustrates how a frontier follows a double movement.

3. Frontiers in terms of dynamic space

I believe that the notion of frontier-city falls within the notion of ‘frontier’, as developed in the last century by the American Frederick Jackson Turner in his work ‘The Significance of the Frontier in American History’. It is the continuous redeployment Eastwards of the ‘Germanic frontier’ (Ostsiedlung) that accounts for the impressive number of the so typical mixed cities of Central and Eastern Europe. The Turkish, Russian, Italian and French expansionist movements are also characterised by this notion of space. Just like the former frontier-cities (Istanbul, Prague, Nice, Fiume), the frontier-cities of today (Grozny, Mostar, Ceuta, Nicosia, etc.) all witness the same movements of ebb and flow, sometimes taking place peacefully, sometimes violently. These cities mark therefore the expansion or retraction of large geopolitical structures.

Brussels testifies for the period of the advance of French in Belgium (1830-1963), while Leuven is evidence of its retraction (1963- ) as a consequence of the Flemish ‘containment’ policy. While speaking about the case of Belgium, I would like to mention the notion of double minority/majority. Often frontier-regions and/or cities, in the light of their tormented histories made of wars and catastrophes, witness situations of double minority and double majority. The majority ethnic group at frontier-city level, may well be the minority at regional or the national level. For example, the Brussels francophones constitute the majority in Brussels, but a minority in Belgium. The Flemish are a minority in Brussels, but the majority in Belgium. This dialectic relationship between majority and minority is typical also of other frontier-cities, from Montreal to Belfast and Jerusalem - Jews are by far a minority in the Middle East, etc. The notion of double minority is not an attempt at denying the existence of a francophone majority in Brussels, or of Israelis in Jerusalem, it simply highlights how this double relationship adds to the complexity, and therefore fragility, of those mixed wholes. The balance of such cities is all the more precarious. This
double minority/majority was typical of Central and Eastern Europe before the Second World War, when frontier-cities were often ‘ethnically’ opposed to rural areas. Transilvania, a frontier-region if ever there was one, opposed citizens of German or Hungarian origin to Jewish or Rumanian peasant populations. The conflict in Bosnia drew one of its sources from the opposition of ‘Muslim’ cities pitched against the Serb countryside.

4. ‘Frontier’ as a zone

Frontier-cities are emblematic of far larger disputed areas or zones. Belfast is the expression of the division of Ulster, just like Berlin emblematised two Germanies. The notion of frontier, therefore, describes both a city (Jerusalem, Brussels, Srinagar) and a region (Alsace, Bucovina, Bosnia, Brabant, Crimea, Kossovo, Transilvania, etc.), or a country (Belgium, FYROM, former Yugoslavia), or an even larger area like what used to be Lotharingia, squeezed between the French and Germanic entities, and Central Europe, an area of Russo-German rivalries. At the beginning of this century, Riga was considered a German city, if not Russian, certainly not Latvian. The very name Latvia originated only in this century, just like Bratislava, that dates back to the creation of the Czechoslovak state.

The term ‘frontier’ refers to a frontier zone and not to a demarcation line. English makes this distinction through the terms ‘frontier’ and ‘boundary’. They are translated into the French ‘région frontière’ (frontier) and ‘ligne frontière’ (boundary). A city like Brussels is less a frontier-city because it demarcates and separates, than that it is so because it regroups.

5. Mixed spaces threatened by extinction ...

A frontier-city clearly represents the last vestige of a formerly far larger frontierentity. The example of Belgium testifies to the largely transitional character of frontier-cities and frontier-regions. Brussels must therefore be considered as the last frontier (in the sense of frontier zone) between the Flemish and francophone areas. In other words, Brussels is the last vestige of the vague area (the Brabant) where Flemish and Walloons co-existed until 1963, when a true linguistic frontier (in the sense of demarcation line - ‘boundary’) came into being. Originally, the linguistic frontier that separated Flanders from Wallonia, was a buffer-zone of several kilometres. Those kilometres were not easily attributable to one or the other community as they were most of the time on uninhabited and uncultivated land and/or linguistically mixed. The villages of the frontier zone were often bilingual. The defeat of the Belgian nation-state inevitably posed the issue of this undefined area (‘frontier’) in terms of rigid limits (‘boundary’). The drawing of the linguistic frontier was accomplished in 1963. The expulsion from Flanders in 1968 of the francophone component of the highly prestigious Katholieke Universiteit van Leuven was the most striking episode of the policy of transforming the ‘frontier’ into a ‘boundary’. This expulsion (non-violent) of Leuven's francophones brought to an end the
pluricentennial history of what was until then a frontier-city. Brussels is, therefore, the last authorised area of francophone-Flemish cohabitation.

Since the advent of nation-states, homogenisation, whether civic or ethnic, cannot be stopped. One after the other, frontier zones become frontier lines (‘boundaries’). This is particularly true in Central and Eastern Europe. From Slovakia to Yugoslavia and Romania. All the successor states to the Austro-Hungarian Empire are dedicated, with the same ardour, to deleting all trace of the Hungarian millennial past.

6. ... that often remain places of memory

The Hungarian example enables us to understand how ‘frontier lands’ give rise to dreams, mystic memories, or even ambitions of reconquest. The loss of a city is perceived in an all the more dramatic way when it embodies part of a national dream, like the cases of Cluj/Napoca, the Hungarian Kolozsvár, fatherland and Capital of Mathias Corvin, the only truly Hungarian sovereign. The example of Kossovo is also convincing enough. The Serbs consider it the historic cradle of their nation, and consequently refuse to abandon it in spite of the fact that they now form a small minority (15%). The Serb nationalist passion with regard to this province has always been doubled by a religious passion, as the Kossovo hosts the most significant temples of the Serb national orthodoxy. First among them is the old patriarchate of Pec. It was not by coincidence that Milosevic launched in Pristina, the capital of Kossovo, the great campaign of the Yugoslav collective suicide. This example allows us to account for the excesses to which certain nations are lead in order to preserve or reclaim a territory considered as vital, if not existential. A frontier area will be all the more bitterly disputed as it appears to be indispensable for the survival of the nation, and this both in metapolitical and ... utilitarian terms. Mysticism and political realism often co-exist. In 1920, Czechoslovakia obtained the setting of its southern frontier on the Danube river where Hungarians were, and still are, largely in majority on both banks of the river. In the same way, the will to keep Brussels in the Flanders' sphere of influence is induced both by the ‘holy’ right of land ("ius soli") and by political realism: as seat to the NATO, Brussels is, effectively, a formidable shopwindow dressed for the world to see. Several years ago, a Socio-Christian Member of Parliament, Jan Verroken, declared that ‘Brussels is our Jerusalem’. It is still necessary to distinguish between ‘holy’ (a metaphysical notion) from ‘holified’ (a more utilitarian and consequently political notion). A ‘holified’ city is not always necessarily ‘holy’. If Brussels appears indispensable to the Flemish elites, this is certainly not the case for the Flemish people as such. The latter does not seem to be too fond of the city. Although ‘Holified’, Brussels is still not ‘holy’, as against Jerusalem, a city both holy and holified par excellence.
Conclusions

Stability at world level will certainly be largely determined in these last ‘rotten zones’ of our planet, and this all the more so if one considers the recent thesis developed by Samuel Huntington from Harvard, who stated that ‘in the new world, conflicts will not essentially draw their origins from idealogies or the economy. The great causes of division of humanity and the main sources of conflict will be cultural. The nation-states will continue playing a major role in international affairs, but the principal sources of the world’s political conflicts will pitch one against the other nations and groups belonging to different civilizations’. He adds ‘in the forthcoming years, the local conflicts most likely to degenerate will be those, like in Bosnia and the Caucasus, that cross the faultlines between different civilizations’. Although this theses appears to be excessive on several accounts, it still has the merit, as stressed by Pierre Hassner, to stress ‘the growing importance of the mythical dimension and of the traditionalist and communitarian aspirations’. It has the further advantage of reminding that in a, by now, senseless world, in Zaki Laïdi’s words, ‘the symbolic fractures occupy a growing role in the competition among states’. It is difficult to disagree with them, in the light of the symbolic importance of Jerusalem in the Israelo-Palestinian conflict. Let us assume that the concessions concerning the division of access to water, important as this may be, will be easier to reach than the concessions on the sovereignty of the three times holy city. There is still the danger that Huntington’s thesis considers unsolvable the problems that, unless major catastrophes occur, must absolutely be settled.

I understand the notion of ‘double responsibility’ contains the only hope for a solution. In those cities where everything is symbolic, all act that may put into question the fragile status quo can effectively spark an ethnic bushfire. This could be no more than the occupation of a simple house in Old Jerusalem, of a public square in Brussels, or a Mosque in India. The example not to follow is that of the Municipality of Cluj in Romania. Here, everything is done to provoke the Hungarian minority, formerly in power. In the ‘frontier-cities’ a ‘nothing’ suffices to trigger an ethnic ‘everything’. Much will depend on the capability of the states concerned to think about those mixed wholes in terms of citizens (within the context of a unitarian state), division (in cases of conflict between two nations), or even abandoning, according to different cases. Unless an agreement is reached on division (but is this really possible among two states?), it will be above all a question of granting collective rights in exchange for the abandoning of all ambitions of reconquest. Israelis should forgo all hope of sovereignty in the West Bank, the ancient land of Jewish patriarchs, but not without certain guarantees.

It would seem that history does not encourage great optimism if one thinks about the conflicts linked to frontier-cities: 1914, the assassination of Archduke Franz Ferdinand in the frontier-city of Sarajevo; 1920, the destruction on the hand of the Italians of the impressive Slovene Cultural Centre in Trieste (Trst); still in 1920, the conquest of Wilno by the Polish army, 1923, the capture of the free city of Klaipeda (Memel) by Lithuanian revolutionaries; 1924, the annexation of the city of Fiume
(Rijeka) by Italy; 1939, the ultimatum and concession of the Czech city of Tesin (Teschen/Ciezyz) to Poland; 1939, the crises of Danzig, a city populated for 96% by Germans; 1940, concession of Memel to Germany; etc. It is the same purifying logic that governed in 1945-46 the expulsion of Germans from the Sudets, putting an end to a largely peaceful co-existence, or the expulsion, although negotiated, of francophones from the Katholieke Universiteit van Leuven.

It is, therefore, not even necessary to discuss the conflicts in former Yugoslavia, to gauge the full extent of the victory of the ‘frontier line’ over the ‘frontier zone’, of homogeneity over mixed. For more than a century, the process of homogenization follows unstoppable its natural course: the exchanges of Greek and Turkish populations, the genocide perpetrated against the Jews, the expulsion of Germans, ethnic cleansing in former Yugoslavia. The Twentieth century will defeat the multiethnic richness of Europe.

Mixed zones will still continue to exist and pose thorny problems. Still, one should not over dramatize the situation. Although nothing seems to stand in the way of the reductive logic of homogeneous nation-states - the classic frontier-zones are practically scaled-down to a few symbol cities - the worst may yet not come. The Czechoslovak Republic was split into two without any violence. Since its rebirth, Hungary opted for Europe rather than for Transilvania. In the same way, the new Crimean war did (still) not take place and this in spite of the economic dismemberment of Russia. Israel clearly could forgo Mount Sinai just like the largest part of the West Bank. The knots that cities like Belfast, Jerusalem and Nicosia represent should not make us forget that there is not a single German willing to die today for Alsatia-Lorraine, that the Flemish do not seek to reconquer Lille, Douai or Orchies, that Czernowicz, Rijeka, Salonica, Pozschny, and Istanbul no longer give rise to ancient passions.

Essentially, frontiers bear good and evil. On the one hand, one cannot forget that it is between Vienna and Prague, two frontier-cities before the last World War, that Nazism was invented, that the direct founder of the Nazi party was born in Bohemia-Moravia, formerly a frontier-region. On the other hand, one cannot forget that it was precisely “men of frontiers” - from Schuman to Adenauer and De Gasperi - who set, despite ups and downs, the European construction into motion, the last utopic frontier of this century.

Zones of conflict par excellence, frontiers may also, one can see it, become places of intercommunicate dialogue.
COMPARING JERUSALEM AND BRUSSELS:
A CONCEPTUAL FRAMEWORK

Michael Romann (IPCRI)

Introduction: are the two cases comparable?

To an outside observer, the urban environments of Brussels and Jerusalem seem extremely different and hardly comparable. Brussels, as a north European city with its mild climate, well established order and traditions, exhibits harmony and a kind of peacefulness. In sunburnt Jerusalem, the most striking features are the numerous contrasts: between the old and the new, the traditional and the modern, the holy and the secular; an atmosphere of permanent tension is always present in the expectation of outbursts of open violence.

In the process of urban and social transformation, Brussels became a multi-cultural city with a growing variety of population groups; it is the presence of the many foreigners - immigrant workers and Eurocrats - which is by far more apparent than the underlying differences between Flemings and francophones. By contrast, in Jerusalem, which traditionally was, and still is, a city of a multitude of ethnic groups - largely differentiated according to religions, countries of origin, and lifestyles - the most evident and visible distinction is that between the Jewish and Arab sectors. Indeed, whereas in Jerusalem the urban scene is to a large extent, and most visibly, determined by ongoing conflict, such manifestation can be hardly detected in Brussels.

Nevertheless, there are a number of fundamental reasons which might justify a meaningful comparison between the two cities.
1) Brussels and Jerusalem both belong to a particular category of ‘nationally polarised cities’, which can be set apart from the more generalised phenomenon of ‘socially mixed’ or ‘multi-cultural’ cities;
2) Polarised cities have in common a whole range of characteristics which can be observed, classified and compared - between cities, and over time -, and which allow the evaluation of different levels of polarisation;
3) Along a continuum of possible cases, it is suggested that at this point in time, Brussels represents a rather ‘mild’ case, whereas Jerusalem is definitely an ‘extreme’ case of polarisation. Thus, it is the presentation, analysis and comparison of the relevant characteristics of these two extremes which might be instructive regarding the particular cases examined as well as the more general phenomenon of polarised cities.

1. Socially mixed versus nationally polarised cities

Most larger urban concentrations are to some extent ‘divided cities’, where a heterogeneous population is comprised of various social and ethnic groups, which
reside side by side. Ethnic groups might differ according to race, nationality, religion, language, country of origin and more. Such divisions are generally expressed by various aspects of social and territorial segregation regarding the location of residence, the establishment of Community institutions, and the kind of intergroup relations. Such divisions also often lead to conflicts of interest and struggle over resources, as related to different cultural norms and social opportunities. In particular, minority groups aspire to a greater share and equity in the provision of housing, jobs, education and other city services.

However, what allows us to refer to nationally polarised cities as a distinct category, are a number of particular characteristics.

First and foremost, it is conflict which predominates city politics and management, and this basically reflects a broader conflict taking place on a national level. Thus, fundamental issues regarding sovereignty and the legitimacy of the state on the macro-scale are expressed in the micro-scale by parallel disagreements on who should rule the city, its symbolic significance and collective identity. In more practical terms, whereas in 'merely' socially divided cities, the major concern is about 'good government' and the efficient and just distribution of public goods, in polarised cities, by contrast, the relevant question is 'whose government?', and who defines the public goals and interests. This is more particularly reflected in the different positions of minority groups in the two cases. Whereas in the first case they wish to fully integrate into the majority system from which they feel to be somewhat excluded, in the second case they rather contest the very system of the current majority rule. Their fundamental goal is self-government and separation rather than integration.

Secondly, polarised cities are characterised by a sort of 'dichotomised environment'. Since national divisions generally involve two major conflicting groups, this also predominates the political and social scene in the urban context. (In fact, even the few cases where national conflicts engage more than two parties, as in Lebanon or ex-Yugoslavia, it is just one major dividing line which characterises the situation in Beirut and Sarajevo.) Unlike the more general case of heterogeneous cities where different groups might form various and changing coalitions, in polarised cities, the major organisational principle of political parties, social institutions and the like - follows the bi-polar national division. Indeed, this basic division sort of 'enslaves' most other social, cultural and ethnic subdivisions in the city. By the same token, various current issues are equally 'enslaved' by the overall national conflict. The composition of city government, the outline of municipal boundaries, urban planning options or service delivery priorities, all receive symbolic values as related to city identity. In particular, issues involving territory and demography are generally considered in strategic, zero-sum terms since they are most closely linked to the majority-minority question. It is for this reason that in polarised cities, it is mainly the struggle for control and power relations which are the determinant factors rather than the more varied and subtle social and cultural differences.

It is in this respect that what dominates the political and daily reality in Jerusalem, is the Israeli-Palestinian conflict, to which the Holy City is the focus and symbol. The fact that the Jerusalem population is traditionally composed of a variety
of ethnic groups, as distinguished by religious practice or regions of origin, is far less relevant under the present situation. It is only within the Arab section that subdivisions consist of Moslems and Christians, 'Jerusalemites'; and 'Hebronites', whereas the other group categories such as 'secular' versus 'orthodox', or 'Ashkenasi' versus 'Oriental', exclusively concern the Jewish population. The underlying 'ordering principle' of the institutional arrangements worked out in Brussels are the contradictory claims of the Dutch and French-speaking communities, rather than the needs and presence of the many other social and ethnic groups such as the foreign Eurocrats and workers.

Indeed, it is this essential feature which makes Brussels and Jerusalem a part of a select class of 'divided cities', which also include a number of other well-known cases such as Belfast, Montreal, Nicosia, Beirut or Capetown.

2. Components of polarisation

In an attempt to compare different polarised cities as regards to their degree of polarisation it is useful to refer to the more general features of plural societies. Several analytical frameworks have been proposed in this respect, all of which focus on how groups differ and relate to each other. Considering the many relevant and inter-related variables, these can be categorised in different manners yet all involve a limited number of basic questions. To begin with, the historic context of inter-group contacts is of crucial significance, whether and to what extent it was voluntary or involuntary. A related issue is how groups are defined, what determines group boundaries and how they are differentiated. Current and changing relative proportions and patterns of distribution in demographic, economic and territorial terms are an additional set of 'independent variables', which are liable to determine group relations.

From these follow a host of 'dependent variables' which can be further classified. These refer in particular to the extent structural diversity keeps groups apart. Cultural diversity might imply core elements such as language or family structure, as well as sub-cultural variations ranging from consumption patterns to political norms. Social separation might equally differ in kind and degree. One question is whether it involves legal differentiation regarding the very personal and collective status of different group members, or whether it is just limited to voluntary associations, such as certain cultural public institutions. Inter-group contacts, for their part, might be limited to instrumental, mainly economic relations, or rather also include more primary social relations such as friendship and marriage. Another aspect of overall differentiation concerns the hierarchical elements of group stratification. Structural differences are often associated with socio-economic gaps and basic inequalities in the distribution of wealth and economic opportunities. Even more crucial are the power disparities, regarding differential access to political decision making. These might be associated, in turn, with various measures of exclusion and discrimination exercised by majority groups towards minority groups.

It should be noted that cultural and social divisions do not necessarily coincide with aspects of inequality, nor do socio-economic gaps with political disparities. Yet,
when evaluating and comparing plural societies, reference should be made not only to the degree of disparity in various domains but also to what extent these overlap.

Finally, and most importantly, the crucial question is: to what extent are group relations characterised by aspects of cohesion and co-existence or rather by controversy and conflict? Here again, cultural diversity or even social inequality as such do not always lead to conflict. It is in this respect that the nature of group values, collective aspirations and political positions and goals, and whether these clash or not, are crucial elements. All these might change over time and with regard to the territory involved at both the national and city level.

Since polarised cities represent a rather defined category with structured group relations, the following comparative analytical framework is suggested. It basically classifies the multitude of characteristics in two orderly and systematically integrated manners. The first considers the two major aspects which determine the pattern of inter-group relations, and is defined as dimensions of polarisation. The second classifies various observable attributes which might testify to the manifestation and degree of polarisation defined as indicators of polarisation.

The comparative scene thus includes the following elements:

1) Dimensions of polarisation
   a) dimensions of division, which are mostly of a cultural-social nature, responsible for keeping groups apart at a social distance.
   b) dimensions of power relations, as related to the asymmetrical aspects of majority-minority relations, and responsible for the differential access to political and other resources.

2) Indicators of polarisation
   a) underlying structures, testifying to the objective elements related to both aspects of division and power relations.
   b) positions and attitudes, related to the more subjective collective aspirations, goals and policies
   c) institutional aspects, where aspects of division and majority-minority relations are legally authorised or enforced.
   d) behavioural aspects, indicating the daily manifestation of segregation and the exercise of power relations.

Several remarks are in order when considering such a comparative framework in general, and its application to specific and different cases in particular. First, out of numerous aspects of group relations, obviously only a select number can be presented as indicators. At the same time, since many social manifestations are interrelated, a limited number of salient or key indicators should by itself help to classify a broader phenomenon like the overall dimensions of polarisation. Secondly, with respect to the degree of polarisation, very few indicators are quantitatively measurable. Practically the only variables of this kind that relate to specific aspects of segregation are the ratios of mixed marriages or calculated dissimilarity indices of residential segregation. Yet, here again, the very kind and sheer number of noticeable indicators as well as their consistency or superimposition should make comparison meaningful and
justified. Finally, since comparison implies specific cities, it also implies, by definition, that particular aspects and indicators of polarisation might differ in kind, orientation and degree. Indeed, a comparative analysis should indicate not only what polarised cities share in common but also in what respects they tend to differ.

3. Jerusalem and Brussels: Selected indicators

Following the above general scheme of comparison, a select number of major indicators are presented and compared for the two cities.

3.1. Dimensions of division

3.1.1. underlying structure

- Jerusalem: what distinguishes Jews from Arabs is multidimensional, and comprises differences in nationality, religion, language, and a host of related cultural aspects ranging from social norms to political conduct. Personal identities are given and unequivocal, and no vague or mixed identities exist.
- Brussels: Flemings and francophones basically differ only with respect to the language spoken, while generally sharing most of the other cultural attributes. Since the choice of language is to a large extent voluntary or circumstantial, change of identity and mixed identities are possible and common.

3.1.2. Positions and attitudes

- Jerusalem: Both parties are determined to preserve their own distinct identity. At the same time, neither side acts to change the personal identity of members of the other group. It is only the ‘Jewish’ or ‘Arab’ character of the city as a whole which is subject to contention.
- Brussels: Here, too, the Flemish versus French identity of the city is at stake. Yet the major pressing issue relates to the transformation of personal identities reflected in the process of Frenchification.

3.1.3. Institutional aspects

- Jerusalem: Different identities, aspects of segregation and measures of identification are often legally authorised or imposed. Jews and East Jerusalem Arabs have a different personal status, while public bodies and private businesses in the two sectors are subject to different rules of operation, as the case may be with special conditions, closing days, or even currency laws. The basic rule is one where most of the different cultural norms, such as the use the Hebrew and Arabic language, are selectively used according to a separate monolingual model.
- Brussels: Legal differentiation is agreed upon and institutionalised with respect to the linguistic community's structures and rights. Parallel monolingualism in certain cultural institutions, is coupled with generalised bilingualism.
3.1.4. Behavioural aspects

- Jerusalem: Practical, highly visible aspects of segregation are generalised. Mixed marriages and primary social relations are non-existent. Residential segregation is associated with that of all activity centres. Parallel public institutions and professional associations, as well as various private establishments, are clearly distinguished by sectoral affiliation. In Jerusalem, every parcel of built-up area and every economic entity is either 'Jewish' or 'Arab'. Daily contacts are limited to functional relations, which are often obstructed by cultural differences and conflict.

- Brussels: Mixed marriages and primary group contacts are frequent and residential segregation non-existent. Divisions are limited to personal matters and institutions related to the use of language, and corresponding parallel political parties.

3.2. Dimensions of power relations

3.2.1. Underlying structures

- Jerusalem: The Jewish sector benefits from a substantial demographic majority, economic hegemony, and absolute political power. This is further reinforced by Israeli dominance compared to Palestinian subordination at a country-wide level.

- Brussels: The francophone majority in the capital is balanced by the Flemish majority position at a national level. This 'double majority' situation relates to various demographic, economic and political aspects, and thus no clear distinction can be made regarding the socio-economic status of members of the two groups.

3.2.2. Positions and attitudes

- Jerusalem: Antagonistic political positions are basically expressed in terms of 'mutual non-recognition'. Arabs deny the legitimacy of Israeli rule over East Jerusalem. Jews deny Arabs the right of collective self-determination. Thus, the major contentious issues relate to territory and control. Since both sides claim the same core territory defined as 'Jerusalem', and define control in terms of absolute sovereignty, no compromise can be attained under these terms.

- Brussels: francophones and Flemings alike accept the political system and act within agreed-upon rules. They further share a political culture of compromise and respect of minority rights. Limited areas of remaining contention relate to the symbolic status of the capital, and to the expanding periphery of the Brussels region.

3.2.3. Institutional aspects

- Jerusalem: By virtue of its dominant position, Israel proceeds in the form of 'creating facts': legal, territorial, demographic and economic. It unilaterally extended Israeli law, jurisdiction and administration over East Jerusalem, undertakes massive settlement projects, and selectively allocates resources intended to enforce Jewish hegemony. In all these respects, Israeli policies are uncompromising. Compromises, mostly and only relate to the respect of Arab autonomous affairs and different cultural norms, even in cases where this means giving up some aspects of exercising full and
formal sovereignty. The Arabs' minority strategy mainly consists in preserving its own separate institutions and of noncooperation with the Israeli authorities and the Jewish sector wherever this implies explicit recognition of Israeli rule. In the absence of formal agreements, various areas of necessary interactions are subject to a kind of 'dialogue of actions', which permits circumventing opposing political positions, and allows practical daily relations.

- Brussels: Proceeding by gradual steps of agreed-upon arrangements, was realised due to a 'trade-off' of compromises at the national and regional-Brussels levels. Whereas francophone minority rights were guaranteed in the first case, those of the Flemish minority were respected in the second. Political co-operation across parallel linguistic institutions and political parties is equally possible, practised, and helpful in reaching such compromises.

3.2.4. Behavioural aspects

- Jerusalem: Jewish dominant positions versus Arab subordination is expressed by aspects of Arab dependency on the Jewish sector. This is the case in various areas ranging from employment, the use of high-ranking services, or the acquisition of the Hebrew language. As a general rule, unlike Arabs, Jews always have a greater choice regarding the areas and kinds of inter-sectorial relations, or the alternative option of exclusive practices.

- Brussels: The dominant position of the francophones led to the process of Frenchification. While this process continues regarding most of the foreign population, it was to a large extent curtailed with respect to the Dutch-speaking community.

4. Concluding remarks

Whereas it was assumed from the outset that Jerusalem and Brussels are part of the same category of polarised cities, the examination of relevant indicators within a comparative framework enables us to focus on what these so different entities indeed share in common. This mainly concerns the disagreement about the symbolic ethnic identity of the capital city, and the crucial importance attributed in this respect to issues of population proportions and related aspects of territorial presence and boundaries.

A systematic analysis further reveals in what respects Jerusalem represents indeed an extreme case of polarisation, particularly if compared to Brussels. Not only that aspects of polarisation in Brussels are relatively limited in number but in addition there is no apparent indicator where the degree of polarisation there surpasses that observed in Jerusalem. Looked at from a broader angle, it can even be stated that the Jerusalem case according to most criteria is probably more dichotomized than that of Belfast. While both cases share high levels of repeated manifestation of violence, in the capital of Northern Ireland there are to be found mixed residential areas, shared institutions and large sections of the two Communities who accept the political system.
Finally, a comparative analysis might also be instructive when considering where the Brussels case and Jerusalem cases essentially differ. This particularly relates to certain aspects of what the conflict is about. Whereas in the first case, it is mainly about the very aspects of division - expressed in terms of language - and the fact that the related identity is subject to change and transfer, in Jerusalem the issue is not religion or any analogous issue. Here the basic issue more directly concerns the dimension of power relations, as manifested by aspects of direct political and territorial control.
ÉLITES IN WEST JERUSALEM

Joab B. Eilon (IPCRI)

Introduction: What is an élite?

There is a large number of definitions for the term ‘élite’ in its socio-political context. The dictionary definition of the noun ‘élite’ is: ‘the choice of the best of anything considered collectively, as of a group or class of persons; persons of the highest class; a group of persons exercising the major share of authority or influence within a larger organisation’, and it originates from the Latin word *electa*, denoting: ‘choice’.¹ Eisenstadt and Ben David, in an early sociology primer published years ago in Israel², describe social élites as ‘one of the instruments of social control’, and identify them with the ‘communicators’, who transmit the society’s values and norms to the general population. While refraining from formally defining élites, they discuss them in terms of their leadership position, role as professionals and intellectuals and relations with institutions representing moral and other values. Ultimately the authors agree that every society has a wide range of different élites, characterised by their place in the social stratification, sphere of influence and scope of acceptance, some of which, mostly the political, religious, intellectual and professional élites, having a stronger inclination to be institutionally organised than others.³

This discussion represents the most general approach to élites, and it illustrates the difficulty of trying to define them ‘once and for all’. Rather than that, we have chosen to rely in this paper on a description that we find sufficient for our purpose: In every society there are groups and individuals that are ‘naturally’ considered as ‘élites’ - by the general society itself, by elements outside that society, by the élite elements themselves or any combination of the above. Most often there is no formal accession to the rank of élite, and members are born into it, co-opted by existing members, treated as such by third parties or auto-define themselves as such.

For our purpose, the descriptive-analytical approach, suggested by my colleague Dr. Bernard Sabella, has been adopted. For the typology of Israeli élites, we have relied on the most recent comprehensive publication in the field, Bar Ilan University Professor Eva Etzioni-Halevy’s *The Élite Connection and Democracy in Israel*, published in Hebrew in Israel in 1993.⁴

After an attempt to take a closer look at the West Jerusalem élite structure, as a variation on the general Israeli theme, we discuss the results of an initial field survey of an arbitrarily selected group of individuals, roughly representing some of the West Jerusalem élites.

These individuals are known for their good connections in East Jerusalem, and we tried to gauge through them the range of attitudes, amongst relatively informed people, toward relationships with the East Jerusalem society, and their perception of
their own role and that of their contacts in bridging the gap between the two societies. The scope of this survey was too limited for applying strict methodological tools, let alone quantitative ones, to the evaluation of such roles. We hope that the means will be found to conduct a more in-depth study of this kind in the near future.

1. Élites in Israel

Israeli society is a relatively recent phenomenon, composed of very different elements, each coming from a different religious, cultural, social, economic and political reality. The founders of Israel and their followers embarked on an attempt to create a new society without a proper tradition of a single accepted social hierarchy. As a result, since the beginning of modern Jewish settlement in Palestine, in the late 19th century, Jewish society in Palestine, and later Israel, has known a constant and rapid rate of change. In every decade between the 1880’s and the present, the definition of elite and the distribution of subgroups within it, would be different. Since this chapter is part of a future-oriented project, it would make sense to begin with the present description of Israeli élites and their distribution in the Jerusalem society, then briefly retrace it historically, and finally concentrate on describing present élite attitudes and future options.

The literature covering élites in Israel is rather meagre. The limited bibliography covering this fascinating field is well documented in Etzioni-Halevy’s *The Elite Connection*. We found it interesting to summarise the highlights of this book as a background to the West Jerusalem reality.

Etzioni-Halevy defines ten kinds of élites in Israel: the political élite, the economic élite, the civil service, the trade unions, the military élite, the religious élite, leaders of social movements, the media élite, the judiciary, and, last but not least, the State Comptroller. Her principal claim is that the level of interdependency between any two or more of those élite groups is so great, that even competition among them cannot disassociate the connection. The author bases her arguments on a position that in a democracy there must be a separation of élites - similar to the need for a separation of powers - and independence from one another, in terms of control of resources and concentration of power. She claims that élites in the Israeli reality lack such independence, the result of which is strengthening the élites at the expense of weakening the democracy.

The founding fathers of the State of Israel came mostly from Russia and Eastern Europe, and, although they explicitly espoused an egalitarian pioneer ideology, the implicit reality was that of a semi-closed ‘cast’ leadership. Being co-opted into this superior ‘cast’ depended on an intricate set of criteria, including cultural-linguistic origin, political credentials, comradeship and favouritism. This applied to the vast majority of the political scene: even after the right-wing opposition of many years won the elections for the first time in 1977, its electorate, comprised essentially of voters of Asian and African origin, had mostly European leaders, whose domination of the social, political and economic scene has lasted to the present day.
During the British mandate over Palestine and up to the establishment of the State of Israel, the Histadrut, which is the Federation of Jewish Workers’ Unions in Palestine (later, in Israel), was, alongside the Jewish Agency, one of the two organisations recognised as the official representation of the Jewish population in Palestine. Both institutions had a certain level of authority, but no degree of sovereignty.

After the establishment of the State of Israel, the Israeli government and the Knesset took over the political responsibilities from the British Mandate authorities and the representative powers of the Jewish Agency, which conserved a limited scope of authority and responsibility as a para-statals organisation within Israel. The Histadrut also conserved a large share of its para-statals authority, exceeding by far that of trade union federations in other countries. Between 1948 and 1977, the same political party - Mapai, roughly equivalent to today’s Labour Party - dominated the government, the Jewish Agency and the Histadrut, and there was a high degree of symbiosis and mobility between the three: Leaders moved smoothly between them, and the same network required for accession to any position of authority served all three institutions.

The Histadrut played a central role in the economic life of the country as well, both as a workers’ union federation and as a collective owner of manufacturing and service corporations. As a result, the political and union élites were tightly connected to an essential segment of the economic élite. The same held true for other economic élites - such as the representative leaderships of merchants, manufacturers, bankers etc. - who habitually associated themselves with the political party in power, whether or not it represented them politically.

Even the military élite was not immune from being part of the old-boys' network: it grew out of the mainstream underground, the Haganah, which originally depended on the Histadrut, and whose leaders became the founders of Israel’s early governments and civil service. It was, therefore, inspired by the same leadership. There has been a constant flow of generals and other senior army officers - who retire with full pension in their 40’s - into civilian life in all its aspects: political parties, unions, the civil service and economic institutions. This movement created, especially in the post-1967 era, an influx of Israeli-born leaders, most of whom had European ancestry, into other élites. Only recently the proportion of young Israelis of Oriental origin in the stream of retired military joining other élités began to increase.

Before we turn back to our main concern, Jerusalem élites, let us have a closer look at the main élites in Israel, which are essentially the same as those of Jerusalem, albeit in somewhat different proportions and distribution of weight. Regarding the political élite, at the present, the majority of Members of the Knesset (MK) are of European (Ashkenazi) origin, and only one-third of the Jewish MK’s are of Asian or African (Sepharadi) origin. About three-fourths of MK’s have at least a graduate degree or equivalent. Women are represented by only ten percent of the members, and there is only one woman serving as a government minister. One could deduce that the political élite is essentially made up of educated men from Ashkenazi origin.
A similar distribution exists within the economic élite. The personal and other dependencies of the political and economic élites on each other are reflected, among other things, in the level of control demonstrated by the government on the non-governmental parts of the economy. The more control government exercises over economic life, the more it can harness it in order to realise the governments' own goals. For instance, the right-wing coalition government serving between 1988-1992 defined the Occupied Territories in the West Bank and the Gaza Strip as national priority areas, investing a high proportion of its own budget in infrastructure and settlements and subsidising capital investments there. When the Labour Party regained power in 1992, it changed the list of national priority areas, shifting investments and subsidies from the Occupied Territories to development towns, mostly in the Negev and the Galilee. When the government attempts deregulation, rather than dissipating the concentration of economic power, it is more often transferred lock, stock and barrel into the non-governmental economy.

The smallness of the market, and the relative large size of some private, governmental, former Histadrut and other holding companies, create a tight-knit network of dependencies and of shared or complementary interests. Both the political and economic élites exercise much of their influence through control over financial resources and the ability to allocate them for the purpose of their choice. The political élite depends heavily on the civil service, the military establishment and the religious leadership, through which it channels large sums of money to the constituencies. The control over money disbursement allows the civil service élite to exercise a level of influence nearly as high as the political and economic élites. Bureaucracy controls organisational as well as financial resources and has a strong leverage over other élites which depend on it.

The military in Israel started as a relatively egalitarian army, the leadership of which became an establishment in its own right. It has had ramifications into the economic and bureaucratic life of society, through its market role as client and supplier, as well as the early retirement of its principals and their integration in other spheres of society.

A typical career is that of a general, retiring into civilian life, being appointed for office as a senior civil servant and using his military and bureaucratic leverages to run for political office on the municipal or national level. Such was the case of the late Prime Minister Yitzhak Rabin, whose brilliant military career was followed by a senior diplomatic position, an election to a ministerial office and finally to the top position of Prime Minister. Other former generals and/or senior civil servants are often parachuted into the business sector. Such was the case of General (res.) Meir Amit who, after retirement from the Israel Defence Forces, served in the civil security establishment (as head of the Mossad), and later was appointed Chairman of the Board of Koor Industries.

The Jewish religious élites - and there are a number of them, signifying different choices within the Jewish religion - derive their authority from the loyalty of their constituencies, who regard them as the supreme terrestrial representatives of a transcendental authority - that of the Torah, the Jewish Law - which supersedes, in
the eyes of many of them, the authority of a democratically elected government. Jewish religious élites achieved, nonetheless, high leverage over political, bureaucratic and other secular élites, often through the politicisation of their own institutions. For instance, while other political parties were conducting primary elections for their candidates to the general elections in 1996, the ultra-religious parties, pragmatically playing the democratic game, obeyed their spiritual leaders with regard to the candidates to Knesset seats, voting discipline and the choice of a candidate for the position of the Prime Minister. In the coalition negotiations they have traditionally been the kingmakers, securing major concessions in religious, political and financial matters.

Other forms of élite seem to be less implicated in this tight network of dependencies, although on some levels they are also part of the same game: leaders of social movements often start as founders of protest groups - such as the Peace Now movement on the one hand and the Yesha Council on the other - and many of them join one or another form of élites, often the political one, such as Peace Now leaders joining the radical Meretz party or the Labour party and Yesha Council leaders serving as Likud or National Religious Party (NRP) MKs.

The mass media élite depends on other élites for information (political, bureaucratic) and financial resources (owners: government and business). It is considered to be an élite since it has a vehicle of mass influence, but its interdependence with other élites sometimes makes it, at the same time, an instrument in the hands of other élites in addition to being an independent factor.

The élite aspects of the judiciary branch and State Comptroller, as well as the intellectual élite, part of which is based in universities, also have institutional, financial and other links to the political, military, bureaucratic and economic élites. Etzioni-Halevy’s conclusion is that the freedom of choice of the individual citizen is limited by the ‘élite connection’, thereby reducing the level of democracy in Israel below what it could or should have been.

2. Israeli élites and the relationship with the Palestinians

There is, however, a relatively high level of individual freedom to act out of the general consensus, and to collectively change this consensus over time. Such was the case of the official and public attitudes toward direct contact of Israelis with Palestinians in general, and with ones overtly identified with the PLO and other Palestinian organisations in particular. From a situation in which any contact with the ‘enemy’ could cause prosecution and punishment, we have come to times in which the bon ton required of political and other public figures, except in the nationalist camp, is to demonstrate close relationships with Palestinian leaders. This did not necessarily mean that such relationships were always genuine and fruitful, and often they served a pure public-relations role. However, in some cases, individuals as well as groups have maintained long-term close relationships with counterparts in the Palestinian society, which, as the peace process began to take off, played various roles in its facilitation and acceleration.
 Whereas in the rest of the country such relations were between townships, in some cases, of which first and foremost is Jerusalem, the relations have been part and parcel of the life in the same locality. Our main question is, whether such relations and contacts have reached or could reach a critical mass that would be instrumental in devising a new way of co-existing between communities sharing the same territory but not the same cultural, linguistic, religious and national heritage. For this purpose we shall turn now to briefly examine the élites in West Jerusalem, before reverting to the question of their relationship with East Jerusalem élites.

3. Élites in West Jerusalem

As mentioned earlier, the same élite typology is valid for Israel in general and for Jerusalem in particular, albeit differently distributed. The most prominent social groups in Jerusalem, in which one can identify élites, are the political, religious and socio-economic groups. These include elected officials, party activists, interest group activists, high officials, clergymen, prominent leaders of the liberal professions, and, to a lesser degree than in Tel Aviv, principals of business corporations, banks and other financial institutions etc. They practically control the majority of leadership positions in the city. In the context of Israeli-Palestinian relations, a central civil service position is that of the Advisor for Arab Affairs of the Mayor of Jerusalem, and much depended on the personality and politic of specific advisors.

Slightly less obvious are the academic-intellectual, mass-communication and the artistic and cultural élites. They include prominent academics and emeritus professors, radio and television anchors, columnists, political reporters and analysts, directors of cultural institutions, writers, musicians and artists. Many of these are simultaneously political activists on the local and/or national level, and many others are activists on the grass-roots level.

Last but not least, there is what I would like to name the ‘marginal élite’. This is a less easily identified segment of the West Jerusalem society. It is typified by the individuals making it up, who often do not belong to any of the more established élites or being single minded within them, but playing a higher-than-average role in society on an individual level. On the national level, such is the case of, for instance Abie Nathan, a Tel Aviv bohemian who became famous in the 1960’s for flying a small plane to Egypt in an attempt to break the ice and help start a movement toward peace. On the local Jerusalemite level one could cite Gideon Spiro, who kept bringing up to the public agenda disturbing infringements of individual liberties by authorities.

The common denominator of all these groups is the fact that any individual belonging to one or more of them can be instantly recognisable, by other members of the group and/or by outsiders, as having more of a say in public affairs than the average person. An attempt to analyse the specific reasons for such prominence would, however, not be easy. For instance, it is not obvious at what point an artist or a media person acquires the ‘élite’ status in society.

A limited survey conducted in late summer 1996, reveals interesting insights in the self-image of different élite leaders as to the very existence of élites, their
characteristics and roles in society and in the relations with the East. The choice of interviewees was consciously focused on a small number of arbitrarily selected prominent figures in West Jerusalem, known for their good and active contacts in East Jerusalem but not constituting a representative sample. The questionnaire was deliberately formulated so as to ensure immediate, unrehearsed responses representing the subjective self-perception of the interviewees and their raw reactions to questions regarding East-West Jerusalem relations. We are fully aware of the need to make a more systematic and methodologically constructed survey if the purpose is to achieve an objective analysis of the situation, and we hope the opportunity for such a research will arise.

Most of the interviewees view themselves as part of the political-institutional élite, and a smaller number to the economic élite. Press and academe professionals declined to recognise themselves as an élite. This may reflect a ‘politically correct’ attitude of false modesty. Others cited the following affiliations: religious, commercial, educational, and a vague description as ‘Israelis working in East Jerusalem’. Very few identified themselves as belonging primarily to the military, trade unions, social movements, the legal professions or the ‘marginal’ élite, although all of them have professional or personal contacts with counterparts in East Jerusalem.

As indicated earlier, the interviewees were not intended to be a representative sample of anything, and we regard them merely as sources of indication by learned and involved individuals. The most frequent reasons given for having good contacts in East Jerusalem were professional and cultural-linguistic, some economic interest, and in two cases, social relationships and mutual respect.

Save for one interviewee, everybody agreed that their contacts or similar ones have or could have a positive impact on enhancing the understanding between both parts of Jerusalem. Most answers were, however, somewhat qualified: one detected a regression in the understanding in recent years and a sharper focus on economic interests; a few others underlined the strictly personal nature of relationships; a third opinion claimed that division within each side prevents the expansion of East-West understanding; last but not least, one pointed out the high degree of uncertainty in East Jerusalem as a result of political claims for keeping a unified Jerusalem on the one hand, and the expansion of the Palestinian Authority into townships near Jerusalem, such as Ramalla.

The Intifada scaled down existing relationships, except for those of journalists, union leaders and some government officials. Sensitivity was higher, motivation was lower, and fear prevailed on both sides.

When confronted with the question of the future of relationships between both sides of the city, at least one opinion was that these are practically two cities which maintain a strictly minimal level of contacts with each other.

Several interviewees stressed the need to improve services and the standard of living in the East, which, in addition to the hopes reviving when the peace process moves forward, will make it easier for the East Jerusalemite to take initiatives or respond to ones coming from the other side. The general understanding was that
everything depends on the political developments, and that direct contacts among intellectuals can only influence it marginally. A tentative conclusion could be that the only relevant élite is the political one.

4. Political élites in West Jerusalem, a closer look

West Jerusalem's present political élite is complex: it includes both national-level and municipal-level groups and individuals, with a large amount of overlap. The current composition of political élite is made up of elected individuals, activists in established political formations as well as individuals and non-profit organisations who carry some weight in the eyes of political groups and personalities in matters of ideology and/or real-politik.

Historically, as early as the Ottoman time, the political élite was directly derived from economic power (the wealthy), the recognised religious and ideological leaders of specific groups (clergy and prominent pioneer spokespersons) and some family lineage which lasted to a lesser degree. All of the above had privileged access to power sources of the ruling power, be it Ottoman, British, Jordanian or Israeli, a state taken for granted both by the authorities and by the general population. Over the years and change of rule, new groups joined the élite - such as Israeli bureaucrats turned politicians and representatives of immigrant groups - and older ones lost their clout (such as old families) or increased it (such as leaders of some religious formations).

As stated earlier, the present composition of West Jerusalem’s élite structure is heavily skewed toward the national Israeli politics. The particular characteristic of West Jerusalemite politicians is the prominent place given to Jerusalem affairs in their agenda, a better understanding they manifest of the East-West Jerusalem realities, and, no matter what political tendency they represent, somewhat higher awareness of the complexity of the Jerusalem issue and the need to work it out with the Palestinians in mind. Partly as a result of the election of a Likud mayor to metropolitan Jerusalem, and partly as a result of the accelerated peace process and its irreversible impact on Israeli [and Palestinian] society, political élite in West Jerusalem, even on the right wing, felt the need recently to create communication channels with its East Jerusalem equivalent.

5. The role of West Jerusalem élites in relations with East Jerusalem

In the aftermath of the 1967 war, many West Jerusalemites sought, as individuals and independently of their party politics, contacts with people in East Jerusalem, and a limited degree of socialising began. Most of it was very short-lived. Political events on both sides and between them brought reality back and, when the dominating/dominated relationship between the Israelis and Palestinians and the quasi-permanent nature of Israeli occupation became clearer, the diametrically contradictory agendas made social and other interactions much more difficult. The most frequent relationships were, from that point on, more on the grassroots level of
employer/employee, service dispenser and receiver, law enforcer and ruled, than between leaderships and élites.

If one considers the Jerusalem municipality as a reflection of the West Jerusalem political élite, then the relationship it entertained with East Jerusalem was less of an élite/élite relationship than a dominator/dominated relationship.

Some representatives of the West Jerusalem political/civil service élite, such as the Advisors for Arab Affairs at the Jerusalem Municipality, and military and security élites, have established contacts with some representatives of East Jerusalem élites. However, when they did, especially before the ‘rehabilitation’ of entertaining relationships with people openly affiliated with the Palestine Liberation Organisation, in conjunction with the events leading to and following the Oslo agreement, they acted as officials, representing their organisations rather than their social affiliations.

A small number of individuals, some of whom were interviewed in our survey, had personal contacts, either as part of their professional contacts, or alongside those, which permitted unofficial exchanges to take place.

The majority of unofficial élite contacts of West Jerusalemites with East Jerusalemites was, probably, within what we branded as the ‘marginal élite’, comprised of individuals without a leadership position in any establishment, but with the vision and drive to serve as living bridges in this cynical reality. IPCRI, and some of the people involved with it in various capacities, is one of very few civic associations dedicated to this vision.

While our survey is not methodologically representative, it does indicate a reality which is familiar to all who are implicated in the East-West Jerusalem relations: while both sides acclaim their devotion to the Holy City as one single entity, the city is actually divided on more than one level. Other papers in this anthology will cover the geographic, economic, urbanistic and other aspects of this question. Regarding the East-West élite relations, the division reflects a flagrant ignorance by most West Jerusalem élites of the political, social, economic and religious reality and living conditions in East Jerusalem, almost as if it was in another country.

With the exception of literary and media intellectuals such as author David Grossman and journalists Dani Rubinstein and Yoram Binur, very few show interest in the other side. It is difficult to say whether the lack of interest is the source or the result of the lack of personal contacts.

I am inclined to presume, pending a more thorough study, that the main reasons for the lack or scarcity of élite relations between East and West Jerusalem, seen from the eyes of the West Jerusalem élites, are as follows:

1) The Israeli Jerusalemites are secure in their identity as Israelis, and have a complete life without having to relate to the existence and needs of another people, even if it lives next door.

2) The Israeli society itself is in a very intense polarisation process, and the aware Israeli is inclined first to look out for the issues within his or her society, before turning to issues between itself and another society.

3) Most Israelis, including most ‘élite’ members, consider Jerusalem as the capital of Israel alone and do not contemplate its political or geographic division. They often
regard Palestinians, including those living in Jerusalem, as part of another people, who
do not share their 'spiritual relationship' with the Holy City.
4) There seems to be a very effective denial in the minds of many Israelis, including
West Jerusalemites, of their tacit participation in the domination of another people,
whose members they see every day on the way to or from work or home.

For these reasons, it would take a particularly sensitive, aware and motivated
individual to get out of his or her four walls and realise that there is a role to play, as
an individual or a member of any élite, in bringing about a solution for the troubled
history of Jerusalem.

Most people in Israel accept Jerusalem as an amalgam of tensions tending
toward, and sometimes leading to, major clashes. For the 1930's, this was vividly
described by the West Jerusalem Hebrew author David Shahar, in his novel The Day
of the Countess9, but anyone who would read it now will recognise today's
phenomena. There seems to be, among the members of West Jerusalem élites, a
combination of some fatalism, a false sense of security and either a high degree of
self-centeredness or of indifference, that makes them insensitive to the role they could
play in laying bridges to their East Jerusalem counterparts for the creation of a more
constructive era in the history of Jerusalem.

Conclusion

This paper began on the premise that there are clearly defined élites in
Jerusalem, and that within them can be found the focal points of existing and potential
bridges between them and their East Jerusalemite counterparts. The disappointment
in finding out the contrary, that the West Jerusalem élites are as vague and as
interdependent as the general Israeli élites, and that the role they play in laying bridges
between East and West Jerusalem is no greater than any other segment of the society,
might be a blessing in disguise: it can dissuade observers from expecting élites to play
a superior role in this particular socio-political process. A more gratifying alternative
would be to focus on significant social groups, irrespectively of the question of
whether they are an élite or not, while trying to identify the centres of influence on the
shaping of tomorrow's Jerusalem. Scholars, under IPCRI and VUB auspices,
discussing the future of Jerusalem, are definitely élitist; but the recognition that the
socio-political and socio-economic tissue of the new Jerusalem depends just as much
on East Jerusalem shoppers in West Jerusalem malls and on East Jerusalem day-
workers in West Jerusalem businesses, as it does on people who can analyse, visualise
and discuss it in abstract terms. Such realisation is of the highest importance to the
eventual inclusion, in the process leading to a solution, of all who have a vested
interest in it. The question how this could be done is not a simple one, but it is not
part of the present chapter. The only recommendation I can make to the policy
makers, on both sides of the city, is, not to forget that the city is really its inhabitants,
and not their temporary representatives or the real or imaginary walls.
Notes


2 Eisenstadt, S.N. and Y. Ben David. 1968. Mavo Leszioniologia [Hebrew: Introduction to Sociology.] Tel Aviv: 313-314. We deliberately chose a basic primer of sociology destined for the uninitiated readership in order to demonstrate a widely accepted understanding of the notion of ‘élites’ rather than discussing its formal definition.


5 Yesha in Hebrew means ‘Salvation’, but here it is an acronym of the names of three parts of the territories occupied in the 1967 war: Judea and Samaria (known as the West Bank) and the Gaza Strip. The Yesha Council represents the Jewish settlers in the Occupied Territories, and is one of the most militant right-wing organizations in Israel.

6 The Hebrew word ‘Kesher’, used in the title of the book, means not only ‘connection’ but also ‘conspiracy’.

7 The interviewees included: Joseph Harel, Head of the East Jerusalem Workers’ Council; Meiron Benvenisty, former Deputy Mayor of Jerusalem; Moshe Sasson, former Israeli Ambassador to Egypt and advisor to the Government; Dani Rubinstein, journalist; Raphael Beilis, businessman and entrepreneur; Joseph Perlman, President of the Chamber of Commerce; Joel Marinov, Director of the East Jerusalem Development Corporation; Meir Ben-Dov, archaeologist and historian; Amnon Cohen, Professor of Islamic and Middle East studies; Yehuda Litany, journalist and television commentator; Teddy Kollek, retired Mayor of Jerusalem; Shalom Goldstein, Advisor to the Mayor on Arab Affairs.

8 Most interviews were conducted over the telephone, and the questions were narrowly defined to allow short and succinct answers. A rough translation of the questionnaire can be found in appendix A.


Appendix. Questionnaire

1) Do you regard yourself as having special contacts with people/organisations in East Jerusalem?

2) What are the reasons for your ability to create and maintain contacts in East Jerusalem? (Open, then choice:) common language (Arabic); common history (being of an old Jerusalemite family); mutual respect; common interest (social, political); common economic base (business).

3) Do you regard yourself as being part of an especially influential group in West Jerusalem? If so, what kind of a group is it and what are its characteristics?
4) Can you name other kinds of specially influential groups in West Jerusalem, which of them has privileged contacts in East Jerusalem and for what reason?

5) Do you believe that such contacts contribute to a better understanding between East and West Jerusalem, or are they personal only?

6) Was there a significant change in the intensity or nature of your contacts between the pre-Intifada and post-Intifada years?

7) Does your circle of influence play a role in the contacts between the two parts of Jerusalem? (a) If so how can this circle contribute to such contacts? (b) If not, what can contribute to them? Can other groups influence them more?

8) Do you have anything to add to the issue of contacts between influential groups in East and West Jerusalem?

9) Can you indicate other people who, you believe, can give a better insight into the questions regarding the contacts between the two parts of the city?
EAST JERUSALEM ÉLITES

Bernard Sabella (IPCRI)

Introduction: definition of élite

The term ‘élite’ signifies a hierarchy or ranking of people on a structure of positions either political, economic, professional or otherwise. This structure of positions is due, according to some, to the different attributes or characteristics of individuals who occupy the top of the structure. Others argue that the structure of positions is due to the complexity and organisational needs of modern societies. Historically, only a small number of people, of any one society, exercised political and other powers in society. The question, however, is how these individuals end up at the top of the structure of the pyramid of power, wealth, influence, prestige, etc. and who are the people likely to become members of the various élites? Another question is whether the élites actually represent the majority of the population or are they ‘élitist’ in the sense that they have their own positions, views and interests which do not necessarily agree with, or match those of the majority of the population?¹

1. Legitimisation and functions

In an environment of political conflict, such as ours, how do political élites among Palestinians legitimise themselves without having access to the means of coercion? What substitutes for coercion? What are the functions they serve with respect to their own people and in relation to Israelis, particularly formal institutions, whether governmental, municipal or others? Does the socio-political context in which they operate tend to make them into champions of their own society and its vital needs and interests? Does élite status provide them with some form of protection and hence manoeuvrability in relation to Israeli institutions and leaders? Does this ‘marginal’ élite role play a bridging function between the two societies or groups in conflict? In terms of political élites, does it lead to the search for a common ground, with opposite political groups, on issues and concerns of mutual interests? Does the same apply for economic, intellectual and religious élites?

2. Élite roots

The roots of the political élite of East Jerusalem are found in the ‘notable’ families that were identifiable with the Islamic Fath ‘conquest’ of Palestine and with the eventual triumph over the Crusaders with Salah ed-Din. In modern times, these élites led the Palestinian Arab fight against Zionism and the British during the mandatory period. Between 1948 and 1967, the political élite of East Jerusalem was split between pro-Hashemite, mostly from the Nashashibi opposition and neutral and anti-Hashemite, mostly from the Husseini faction. Since 1967, the political élite has
become integrated into political groups and factions belonging to the PLO. Members of ‘notable’ families took part in this politicisation, even though these members did not have to be politicians or active participants in the political movement, especially if they were older members of their families. The younger members had to prove that they were active; some followed intellectual academic endeavours, others were clearly more politically oriented and still others combined these activities together. One characteristic that gave pre-eminence over other members of their political groups and/or organisations was the fact of their belonging to prominent families with well-known names.

Since 1967, the political environment has changed. The presence of Israel and its municipal and administrative set-up meant that the traditional and modernising elite members had to compete with modern bureaucratic organisations that dispensed of their benefits and services in a legal-rational manner and not on traditional bases. In fact, the traditional bonds in the East Jerusalem society which tied the mass of the population to these elite families was weakening. This explains why younger elite members opted for political action and membership in Fateh and other political factions of the PLO. While there are elite members who traditionally identified with leftist tendencies, especially in Jerusalem, the majority of notable family members identified with the mainstream faction. The PLO responded quite positively to the elite sense of belonging because, in one sense, it was giving the PLO further legitimisation and thus constraining the possibility that alternative nuclei of political formation would develop. In one sense, the PLO could be said to have followed a policy of elite co-optation that was seen as beneficial to the overall objectives of the nationalist movement. Elite members secured higher positions within the movement, not necessarily because of merit but rather because of family background and its social and political significance. The old patron-client relationship often identifiable with traditional leaderships had to change after 1967. The joining of political movements of the PLO meant that identification with political platforms of wider groups and not with family history, background or traditions was now the basis for self-assessment.

3. Palestinian family élites

Palestinian society has been characterised, historically, as a society with ‘notable’ families at its top. The basis for the appearance of an élite of notable Palestinian families has been a religious one. The Muslim take-over - Fath - of the land in the seventh century brought with it ancestors of present day families that participated in the Fath of the country. These ancestors took initially religious functions related to the maintenance and running of the Muslim holy places in Jerusalem and all over Palestine. In Jerusalem, and elsewhere, family names like al-Khatib,(the preacher) al-Imam (the leader of prayers) and al-Mouwaqet (the time-keeper of prayers) denote actual functions which were associated with specific religious duties performed by the ancestors of these families when they arrived into the country and lived in it. This is not unique for Jerusalem but was the practice throughout the land especially where religious holy places were found such as in
Hebron. But some of the family names were also associated with historic religious personalities and/or with specific localities. For example, the Husseinis trace their descent to Hussein, the son-in-law of the Prophet, and were entrusted with the guardianship of the Nabi Musa shrine, which was founded by Salah Ed-Din. The Nusseibehs acquired their name from Nusseibeh, a woman who pleaded with the Prophet the bad conditions of the Arab Muslim woman. The Nusseibehs hold the keys to the Holy Sepulchre and contend that Omar, the second Caliph, entrusted them with the keys. The Alaris claim direct descent from Hassan, the grandson of the Prophet; their early ancestors came to the country from North Africa, around 12th century, to join Saladin in the holy war against the crusaders. What applies to these families applies as well to other families, with the appropriate modifications, such as Barakat, Ja'ouni, Fitiani, Kutayna, Shahabi, Darwish and Budeiri.

In reviewing some of the other prominent Muslim families of Jerusalem, it became clear that almost all of them are associated with religious sites and/or specific events and personalities. Among these families are: Nashashibi, Khatib, Sayeh, Assaly, Malki, Alami, Dajani, Tamimi, Abu al-Su'ud, Imam, Khalidi, Sourouri, Abu Midyan, Khalili, Shahabi, Al-Mowaqet, Rasas, Judeh, Jarallah, Qutub, Dakkak, Ansari, Daoudi-Dajani, Deisi, Tabaji, Bashashteh, Hariri, Afifi, Hidayah or Muhtadi, Shabani, Al 'Ori, Salhi, Najjar, Qalqashandi, Eisseli, Shahwan, Duzdar, Hidmi and Al-Aref.²

There were also prominent Christian families in Jerusalem: Salameh, Tannous, Farraj, Marrum and Atallah. These rose to prominence either because of trade activities or of the professions of their members such as Tannous in trade and Marrum in the legal profession. Usually, actual prominence of specific families, whether Christians or Muslims, was linked to the rise and fall of members of these families in administration, politics, trade and other areas of city or society-wide relevance.³

Accordingly, circulation of leadership in the various spheres depended on individual achievement of family members and not on strictly inherited family prestige.

But members of Christian families rarely played a society-wide prominent political role, except in a secondary position. Christians almost always assumed a secondary role due primarily to their low percentage in the population and to the fact that religion plays an important organising role in Palestinian society and politics. None of the five Christian families mentioned above is in a position of prominence today as some have left for elsewhere; others became successful businessmen but faded out due to financial difficulties.

There was no parallel development among Christian families to that of Muslim families with respect to land grants. Some of the Muslim families were granted tracts of land in and around Jerusalem, thus becoming landowners of agricultural land who turned into absentee landlords. Whole villages in the country came under the control of one or other of these families, thus consolidating their prestige and power and providing a basis for a wider constituency than the immediate family or urban vicinity. The process of consolidation of the family elite through land grants was also repeated following the triumph of Salah Ed-Din over the Crusaders in the twelfth century. A number of ancestors of present-day families accompanied Salah Ed-Din and, as
recognition of valour and sacrifice, were awarded tracts of land for their contributions to his successful military campaign.

Palestinian and Jerusalem's religious and landlord élites were often composed from the same élite families. Thus the religious basis contributed to the rise of a landed and also an economic/merchant élite that benefited from its position of privilege and prestige in the society. Often privilege and prestige allow individuals and families to gain preferential access to resources, including education, jobs and general placement in society. Outside of Jerusalem, the families that rose to prominence accomplished this more on account of their success in trade and commerce rather than on the more traditional bases. Thus Jaffa and Haifa families were more oriented towards trade and commerce, on the one hand and towards citriculture as was the case of Jaffa's Abu Jubayn, Baydas, Abu-Khisk and Abdel Rahim. The Rocks and Jalads of Jaffa were Christian families engaged mostly in trade.⁴ There were, accordingly, more 'élite' families in the coastal towns that did not claim their status on religious basis.

4. The Jerusalem family élite as nucleus for society-wide networks

Because of the sanctity of Jerusalem, its locality and its centrality in the country, the Jerusalem families became the nucleus for family formations and alliances that encompassed the whole country. In other words, the power of the Jerusalem families extended far beyond the limits of the city. The reasons for this relative power, especially under the British Mandate but also under the Ottoman Empire, were:

1) The fact that the Jerusalem families were close to the centre of power and administration over the whole country or large parts of it.

2) The religious importance of the city and the role that its families played either in Muslim Councils or in upkeeping and running the Muslim holy places.

3) The economic advantage of Jerusalem's families, whether from land or from commerce and activities related to Jerusalem as a centre of pilgrimage and tourism.

It was therefore natural that the Jerusalem families became very influential and that, in matters concerning the whole of society, these families came to play a pivotal role. The bases for the power and 'élitism' of these families were clearly traditional. The 1948 war with the dispersal of the Palestinian people and the creation of the state of Israel spelled failure for the leadership of these families and, accordingly, cast some doubt on their claims to leadership and élitism. But this failure did not spell the end of these families and their influence. The result of the 1948 war was to weaken the Jerusalem families considerably with respect to Palestinian society, in general, but members of these families were eventually integrated into the Jordanian government through their co-optation into the Cabinet and other institutions of state. The Jordanian Cabinet, in particular, was a central institution in the process of integrating the West Bank with the East Bank and hence the co-optation of members of the leading families. At first, the pro-Hashemite Nashashibis were invited to become ministers in the Jordanian cabinet. Eventually, the cabinet was open to all willing to serve, irrespective of their previous political position from the Hashemites and
Jordanians. Husseinis, Nusseibeis, Khatibs, Dajanis, among others, eventually served in the Jordanian cabinet thus bolstering their family positions and at the same time reinforcing the position of Amman as the new centre of power.4

Palestinian society in the West Bank and in Jerusalem was thus governed and represented by the same members of old families that have failed in safeguarding Palestine, as its leaders. One should not forget, however, that some élite family members such as Abdel Qader Hussein, the father of Faisal Hussein, have paid with their lives while fighting for Palestine. But generally speaking, the power and influence of these families have become muted for the following reasons:
1) Many of these families came out weakened from the 1948 war as they have lost property and as their prestige waned as a result of the disintegration of Palestinian society.
2) The transfer of the centre of administration and government to Amman weakened the status of Jerusalem and made it into a secondary city.
3) Some families have lost members to emigration to other Arab and non-Arab countries thus weakening particular families and lessening further their influence.

5. Élite families, post 1967

When the June 1967 war took place, members of Jerusalem families, including those from Hebron, which have lived in Jerusalem for some time and identified fully with the city and who were in key religious and administrative positions, became the ipso facto spokesmen for Palestinians. Examples are Rawhi al-Khatib, mayor of Jerusalem, Sheik Sa'd ed-Din al-Alami, head of Muslim religious court, Faek Barakat, head of the Chamber of Commerce. Many of the administrators of the religious Islamic Awqaf, some of whom were from an Hebronite origin, also played an important role in safeguarding Muslim and Palestinian rights in the Eastern part of the city.

Members of the ‘leading’ families that insisted on independent and autonomous Arabic institutions in East Jerusalem eventually found themselves deported by the Israeli authorities, hence further weakening the Jerusalem families and their influence in the city. Jerusalem institutions, other than the municipality that was dissolved by the Israeli authorities, either charitable, social and religious, took an important role in mobilising Palestinian public opinion in order to limit and contain the negative effects of Israeli decisions with respect to East Jerusalem and its status as an Arab Islamic city.

The influence of members of ‘notable’ families persisted and, in fact, Israeli authorities found it more expedient to deal with them on matters touching on the Eastern part of the city. In one sense, the Israeli authorities were extending legitimacy to claims of notability and élitism by members of these families. In return, members of these families in the various capacities, whether in Muslim Awqaf, Chamber of Commerce, schools and education and in other areas, were expected not to actively engage in opposing Israeli plans and designs for the city of Jerusalem. That this did not happen was due to a variety of reasons:
1) Members of notable families could no longer operate in the society as their ancestors did prior to 1948, due to socio-economic and political changes in the city and society. The patron-client relationships no longer fitted the changing times.

2) The emergence of the Palestine Liberation Organisation, in 1964, as a grassroots national liberation movement limited the influence of these families in society-wide decision making, including issues affecting Jerusalem and its standing.

In addition to the weakening of the traditional bases of power and privilege, the fact that Israel introduced its institutions of municipality, national insurance, Histadruth and its various institutions such as the National Health Service, meant also a challenge to the influence of notable families. These Israeli institutions, in spite of the initial high animosity and resistance to them by Jerusalem Palestinians, operated on ‘rational-legal’ principles and thus were geared to address the needs of those who subscribe to receive services, irrespective of religion, national background or political preference. These institutions ran counter to the traditional ways of doing things that were characteristic of Arab Jerusalem society up to Jordanian times.

6. Privilege as involvement in Palestinian national politics

Accordingly, members of notable families could no longer claim power and privilege simply based on religion, history and tradition. Not that these have become obsolete but they could no longer serve, in and by themselves, as claims by members of notable families to leadership within society.

Members of élite families, such as Husseini, Nusseibeh, As-Sayeh, Dakkak and others, who wanted to be prominent and influential, had to become involved in Palestinian national politics. This meant that they had to identify with the PLO and its various political groups and factions. Fateh, identifiable with Mr. Arafat from the late sixties, attracted a good number of élite family members. Other groups, such as the Popular and Democratic Fronts but also the Communist Party, also attracted élite family members, but to a lesser extent. The importance of this process was that these family members realised that they could no longer legitimise their claims to leadership only on traditional bases. This transformation from family organisation to political party organisation, or a mixture thereof, meant that the basis for influence and privilege has shifted to apparently more modern basis. The process was a complex one, and remains so today. Both the PLO and the families themselves had to undergo mutual adaptation but both have found advantages in the process.

7. The élite and Palestinian institutions

The question that concerns us is how did these ‘élite’ leading members act, even in their capacity as PLO functionaries, to gain the respect of their own constituencies on the one hand and what role did they play in relation to Israeli institutions and authorities, on the other? Examples that could help answer these two questions are: the Municipality of East Jerusalem, the Islamic Council, the Chamber of Commerce, the Jerusalem Electricity Corporation and Orient House.
The Municipality of East Jerusalem, with its élite family and merchant members, was seeking to continue functioning after June 1967. The Israeli authorities, with the mayor of the Israeli municipality, objected to this proposition and on 29th June 1967, the Israelis announced the dissolution of the East Jerusalem municipality. The 370 Arab employees of the East Jerusalem municipality were absorbed into the Israeli municipality. This was justified as continuity of providing services to the Arab residents of Jerusalem but, in effect, it was an acknowledgement, albeit forced, of the emerging political and administrative reality. The Jerusalem élite apparently could not play, to its advantage or that of the Arab population of the city, the complex dynamics of political and municipal priorities as determined by the victorious Israelis.

But Rawhi al-Khatib, mayor of the dissolved municipality and scion of one of the city’s notable families, had a better day with his attempts, as chairperson of the board of the Jerusalem Electricity Company, to maintain Arab control over the company. When the Israeli municipality, as ‘legal’ inheritor of the East Jerusalem municipality attempted to take over the JEC, al-Khatib contested the action and won an Israeli court decision in favour of the Jerusalem Electricity Company. The Board of JEC was composed of members of mostly established families that were considered pro-Jordanian. The influence of Jordan, both legal and financial, was to continue to be felt through these members and actions undertaken by them in order to protect the Arab nature of the company.

Al-Khatib was soon deported, partly because of his non-co-operation with the Israelis and because he and other members of élite families such as Sheikh Abdul Hamid As-Sayeh established the National Guidance Committee. The aim of this Committee was clearly to mobilise Palestinians, in Jerusalem and all over, to resist Israeli efforts at annexation of the city. As-Sayeh, the leader of NGC was deported in September 1967 and al-Khatib, the subsequent leader of NGC, was deported less than a year later in 1968.

Sheikh As-Sayeh, who became later on in the eighties the spokesperson for the Palestinian National Council, was instrumental in constituting the Muslim Council in 1967 in order to run and maintain Islamic holy places and affairs, independently from the Israeli authorities. The effort was successful and was used as a basis for the eventual ‘mutual acknowledgement’ of the Israeli authorities and of the Muslim religious authorities of a modus vivendi that allowed the two sides to operate independently of the other but with certain contacts and agreements concerning practicalities and technicalities involving holy places, religious courts and other related matters. The religious sphere was clearly a domain of the Jerusalem élite families, and other Palestinian élite families especially from Hebron, that continued to influence its course and, until the coming of the Palestinian National Authority, were formally tied with Jordan.

The Jordanian government, influenced by the view of the King and the Hashemite dynasty on the universal Islamic character of Jerusalem, has always insisted on a Jordanian role in the maintenance and upkeep of the Muslim holy places and the al-Haram al-Sharif compound, in particular. It was thus natural that when Jordan signed its peace agreement with Israel on October 26, 1994, one of the issues
included, was the special role of Jordan with respect to the Muslim holy places in East Jerusalem. This was viewed with great reservation by Palestinians who saw it as an attempt to pre-empt a solution in which Palestinians would be the sole people responsible for al-Haram al-Sharif and other holy places under their control. This misunderstanding, however, has been worked out and recent events, such as the visit of Sheikh Hasan Tahboub, in charge of Awqaf affairs in the Palestinian National Association, to Amman and the contribution by King Hussein of prayer rugs, point to the direction that co-operation and co-ordination in this vital area are developing to safeguard this universal Islamic trust, in a way that would not infringe on Palestinian national rights in East Jerusalem. The Jerusalem local élite could have played a rapprochement role in this sensitive matter, particularly Mr. Faisal Husseini, who is in charge of the Jerusalem Portfolio in the Palestinian National Authority and who has visited Jordan many times since the Jordanian-Israeli Peace Accord. But the final decisions on Jerusalem, clearly, rest with President Arafat, the Palestinian Cabinet and the PLO Executive.

Another élite-run body tied to Jordan was the Chamber of Commerce which joined the efforts, early on after the occupation of the West Bank, to resist Israeli measures at annexation of East Jerusalem. It resisted incorporation into Israeli trade and commerce institutions and maintained its independence and strong links with Jordan. Eventually, the role of the Chamber of Commerce was limited to a meeting place when issues and concerns, affecting the Arab merchants of the city, needed to be discussed but, in addition, it served at renewing Jordanian passports and documents that Palestinians needed in order to travel back and forth to Jordan.

These Palestinian institutions clearly left their impact during the first decade after 1967. From the mid-seventies, however, the strength of the PLO became to be felt in the political and administrative arrangements of Palestinians in Jerusalem and the West Bank. This was reflected in the popular organisations and unions that were created in the seventies to co-ordinate Palestinian response to Israeli measures and plans in Jerusalem and elsewhere. Two trends became apparent in the mid-seventies, with the first municipal elections in the West Bank. On the one hand, there were the old élite family members who combined with grassroots political organisations to ensure victory in almost all municipalities in the West Bank. Shaka'a in Nablus, Abdel Jawad and Khalaf in el-Bireh and Ramallah and Qawasmeh in Hebron are all examples of this new trend.

On the other hand, influence of traditional ‘élite’ families continued to be felt especially in charitable and social/educational institutions and in relations to the Arab world and to Jordan, in specific. Jordan continued to support charitable organisations and to have influence in the educational system, through its Department of Education which supervised the curriculum in West Bank and East Jerusalem schools. This influence was translated into links with members of families long known for their ties with Jordan. This was not restricted to élite families but also reached to grassroots, especially in strong rural areas such as Hebron and Nablus.
8. The phenomenon of *Sumud*, ‘steadfastness’

The phenomenon of *Sumud* ‘steadfastness’ could be the mixture of old traditional leadership and new political PLO groups and factions. That a patron-client relationship was encouraged by Sumud, is beyond doubt. But this relationship was no longer restricted to Jordan but involved as well the PLO higher echelons that started developing their own patron-client relationships. Thus the new patrons were no longer only the members from old established families but had the rank and file of the PLO who have made it as political and administrative functionaries of the organisation. But as political organisations and activist groups evolved into the early eighties, it became clear that the political game in Jerusalem and the West Bank was drawing away from the effects of traditional politics. Not that the traditional families no longer counted but the rallying forces in society were young activists, male and female, who wanted to chart a course of national liberation and social transformation in order to establish a modern society.

Another factor which contributed to the weakness of Palestinian family élites was the fact that they were generally characterised as self-contained whose primary motivation was their own interests and those of their kin rather than those of the society as a whole. This localism and “familism”, stronger during pre-1967 but still apparent nowadays in composition of boards of trustees for local charities and schools besides the awarding of jobs and other privileges to close kin, has contributed to the weakening of the potential role of family élite as a political and social leadership for the whole society.12

9. The local élite and the emergence of the PLO

With the 1967 war and the emergence of the PLO, family élite was no longer the hegemonic élite of Palestinian society. A new élite was emerging which comprised the hierarchical, political and quasi military organisation of the PLO. The PLO sought to be the major if not the only centre of power in Palestinian society. Accordingly, it was not interested in the emergence of a competing centre in the occupied territories and hence the passive role allotted to the inhabitants of the territories which focused on non-co-operation with the Israeli authorities or Sumud. When there was a perceived threat to the influence of the PLO centre, as with the autonomy plan of the late seventies or the establishment of the Village Leagues in the early eighties, the PLO hurriedly established bodies, such as the National Guidance Committee in 1978, to consolidate the centre-periphery relationship.13

Viewed from this perspective, the local West Bank and Gaza élite was not able to compete with the PLO on becoming a society-wide leadership. This applies specifically to East Jerusalem élite members of which could not establish a wide base or constituency to legitimate even their role within the PLO. To a great extent, the allegiance of the overwhelming majority of the Palestinians in the Occupied Territories to the PLO, and the symbolic and actual political weight attached to it, constrained and limited the opportunity for such a transformation. Israeli policy of
fragmentation and cantonisation of towns and villages and of the West Bank and Gaza Strip also played its role in limiting the possibilities of the emergence of a society-wide leadership. This is particularly true for the East Jerusalem family élite. When the Israelis were looking for a leadership capable of delivering, there was no question that such a leadership existed only within the PLO. Local élites could deliver only at the local level, under certain circumstances, but they definitely could not deliver at the national level. The Oslo process is the prime example: while the ‘local’ Palestinian delegation was sitting in Washington to negotiate, the top decision makers in the PLO were conducting parallel secret negotiations. The Palestinian ‘Oslo’ negotiators could deliver while the Palestinian ‘Washington’ negotiators simply were taking negotiations to heart.

The relationship between the Palestinian National Authority and the local élites in various spheres differs according to need and mutual interests. Thus, it is clear that the PLO adopts the policy of co-optation of members of family élites whether in Jerusalem, the West Bank or the Gaza Strip. The relationship is thus mutually reinforcing: the Palestinian National Authority needs these members and they, by their turn, need the Palestinian National Authority to legitimise their position of relative privilege and prestige in the society. Both benefit from the relationship which point to the possibility that power relationships in Palestinian society, under the new conditions, tend towards élite formation although on new bases rather than traditional ones.

In Jerusalem, members of the leading families either continue on a course of traditional politics with bases in charitable, social, educational and commercial enterprises or, as happened with the new generation, opt to become outright activists in PLO and its affiliated organisations. The younger generation of Jerusalemites identified most conveniently with the activists since the political party and its guidelines determined the relationships. The older generation, however, tended to be more conservative and identified more with those members who still played traditional politics with some ‘cosmetic’ modern traits and criteria.

10. The emergence of a split approach in Jerusalem

The challenge to the emerging leadership is clearly political and institutional and the prize is Arab Jerusalem with its integrity as an Islamic city, with allowance made for its universal characteristic as a Christian and Jewish city. Yet continued to control Muslim religious waqfs and councils by members of traditional families point to the fact that these families still have substantial influence in institutional matters, especially related to holy sites and places. But these families also needed a clear political presence. This was afforded by the PLO which, in the eighties, started adopting a co-optation policy towards the élite families whether in Jerusalem and elsewhere. This co-optation policy, as we have seen above, continues today with the Palestinian National Authority. In fact, co-opting the élite families was a tactic used by the PLO to contain any possible alternative leadership, on the one hand and to encourage members of élite families to offer allegiance to the organisation and its
leaders thus increasing its legitimacy as the sole representative of the Palestinian people, on the other.

But the dilemma of the élite members in Jerusalem has to do with the relative high expectations and anticipation of Palestinians living in East Jerusalem. These expectations and anticipation were the results of the long process of ‘Israelising’ imposed on the population during almost a third of a century and hence emphasis was not simply dogmatic or ideological but came to revolve around concrete economic and social issues and aspects of living. The expectations of Jerusalemites were not in speeches, mottoes and promises but in tangible accomplishments on the ground. This attitude among Jerusalemites was formed by many factors:

1) The economic situation with its pressures and effects on family life and priorities.
2) The Israeli institutions, which determined to a great extent many aspects of Palestinian Jerusalemite life, whether municipal taxation, licensing in all its kinds and basic services of health and education, among others.
3) The delivery system of tangible and concrete goods whether in services, licensing, employment and other goods.
4) Israeli measures and policies aimed at containing East Jerusalem's development and the growth of its Arab population.

Clearly, a split approach was starting to develop among Jerusalem Palestinians in relation to their élite ‘leaders’. In matters relating to religion and holy places, Jerusalem Palestinians were unified after their leaders since they have identical views and outlooks on the religious situation. In matters pertaining to overall political ideology, there was also a consistency in the positions undertaken both by the élite members and by the mass of the population. The difference, however, rested in the utilitarian aspect with which Jerusalem Palestinians handled their relationships with the Israelis. In areas, where Israelis could deliver, the choice was clear. These areas touched on health, education, employment, social welfare, national insurance, among others. These pragmatic areas were the ones least affected by the political and élite leadership. A compromise has been achieved between the religious and political stand, on the one hand; and the pragmatic needs and orientations of Jerusalem's Arabs, on the other.

One can view this split approach with a mixed appreciation: On the one hand, it points clearly to the failure of the Palestinians to resist the imprint of Israeli policies and institutions which affect their daily lives. In effect, it makes the Palestinians into a recipient population with reaction, rather than action, on its part. Recently, the political leadership of the Palestinians, including local family élite members, are becoming aware of this and they are speaking out loudly the need to have housing and other plans that would serve the Arab population in an independent manner from Israel. The problem, however, lies in creating the administrative infrastructure that would allow for the Palestinians to do just that. Granted that Palestinians in East Jerusalem have an educational, medical, religious and social infrastructure does not compensate for the absence of an administrative infrastructure capable of handling the local needs, problems and plans. The split approach points to one possibly positive effect: the problem of Jerusalem can either be viewed as political and hence hopeless
in terms of a solution under the present circumstances or it can be viewed as a problem of administration and hence alternatives can be examined to make it possible for all groups in the city to run their own affairs by themselves. If Jerusalem is viewed in this light, could there be a possibility to learn from Brussels and to examine in a deeper manner some of the working arrangements in Brussels and how applicable they are to our situation in Jerusalem? The 'cultural autonomy' in Brussels could be applied to Jerusalem while the city continues to be undivided and in fact arrangements for shared government become a feasible alternative to the present stalemate.

11. The example of Orient House

Orient House could provide an example of this compromise in the late eighties and early nineties. Orient House combined both traditional élite and modern political trends: Faisal Husseini, in charge of the Jerusalem portfolio in the Palestinian National Authority is a member of one of the most prestigious élite Palestinian families. At the same time he is a political activist: it is this combination that makes his work and presence in Orient House most effective on the political level. In his contacts with Israeli authorities, as with other Palestinian activists in Jerusalem who come from élite families, he is viewed as strictly an activist and accordingly could undertake contacts, meetings and negotiations with Israelis. His élite family background, by itself, does not enable him or others from élite families to engage in contacts with the Israelis. In other words, there has been a transformation of the social structure of East Jerusalem Palestinians whereas the members of top families can no longer assume the leadership of the Jerusalemite society without political legitimisation by the PLO and now by the Palestinian National Authority. Accordingly, if Israeli authorities would approach members of élite families who have no history of political activism, it is doubtful that they can deliver with their own population. This, however, does not mean that these élite family members do not have a privileged position and status in the society and its various institutions whether religious, charitable, economic and social.

The privilege and status of the élite families are challenged, however, by their inability to provide for the population at large useful or functional patron-client relationships as in the past.

While in the case of Orient House, patron-client relationships are exercised on a limited level, they are not city-wide in spite of the connections, relative wealth and other resources made available to this East Jerusalem institution. Thus, Orient House remains limited in importance to being a political symbol of the East Jerusalem Palestinian population and hence its importance and significance to Palestinians in the city and elsewhere. The challenge posed by the Israeli rational-legal, institutional arrangements revolves around the facts that Israeli institutions can absorb many more workers than the élite families can absorb in the charitable, religious and educational institutions where they have influence. The élite families could absorb tens or hundreds of workers but their system of influence remains limited and, hence, the majority of Palestinians in East Jerusalem would deal directly with the Israeli institutions. This comprises a deligitimisation process of the élite families at the same
time that many Israelis, both at formal and informal levels, continue to 'legitimate' the position of the members of élite families. For example, in a recent meeting between Mr. Faisal Husseini and Avigdor Kahloni, Minister of Internal Front in Israel, the discussion, as reported by Al-Quds newspaper dealt with topics ranging from the closure and Israeli military and police checkpoints around East Jerusalem to the Israeli identity cards of Jerusalem's Arabs, among other topics. Clearly, there is a tendency in some circles in the present right wing government of Israel to 'legitimise' the position and role of Mr. Husseini as spokesman for the Palestinian Arabs. Is there an Israeli hidden agenda behind this or does this come as a recognition of the fact that eventually both sides need to sit down and talk about Jerusalem? At the same time, plans by the Jerusalem municipality to invest in infrastructure in East Jerusalem are a clear indication that Israel can, if it wishes so, consider investing substantial sums if such investment helps pull the rug from under the feet of the Palestinian national and élite political leadership.

Conclusion

The question to ask is whether East Jerusalem can survive as an Arab Islamic city without the leadership of its élite families? On the religious and political fronts, the answer is a definite one, since, as explained above, these families and their members continue to have their place and influence in the society of the city and in the politics of Palestinian society. On pragmatic and practical mundane matters, the élite families are clearly constrained in what they can offer to the Jerusalem constituency. It is possible that an accurate assessment of the situation and the constraints and limitations placed on the élite families and, in fact, on the Palestinian National Authority, can lead to the adoption of a new strategy that could counterbalance in some areas such as housing and local and municipal administration, the effects of Israeli institutions and policies on the Arab Jerusalem society. But élite families and their members, in spite of the transformations discussed above, continue to be part of the Jerusalem Arab society and continue to have a role that extends, on the one hand, to the Palestinian National Authority in activist and engagement politics and, on the other, to Israel in protest and contact capacities. It appears that élite politics will continue to be a necessary component in Jerusalem politics and in Palestinian-Israeli efforts to determine the final status of the city and its various communities and holy places.
Notes


2 For names of these families and their particular associations with holy sites or historic personalities see the following sources: al-Dabbagh, Mustafa. 1965. 
Mured Biladunea Filistin.
Beirut, at-Tallat. [in Arabic]; Shim'on, Yaacov Aravei Eretz. 1947. Israel, Tel Aviv. [in Hebrew].


4 See: Sabella, E. 1971: 30-32


10 See various issues of Palestinian Dailies such as Al-Quds and An-Nahar for the months of October-November 1996 for their reports on al-Haram al-Sharif and Jordanian-Palestinian contacts on the matter.

11 Benvenisti, Meron. 1976: 166.


STRANGERS IN A STRANGE LAND

- The role in the life of Jerusalem of diplomatic missions, Churches and religious groups, and the Non-Governmental organisations -

Robin Twite (IPCRI)

Introduction

This article attempts a brief overview of the role of several varied groups of 'outsiders' in the life of Jerusalem since 1947, a period of almost fifty years. The diplomats stationed in Jerusalem, the Christians sent to the Holy Land by their mother churches, and the officials working for various Non-Governmental Organisations. Each had, and has, their own specific history and interests and the position of each has changed over the years that have passed since the foundation of the State of Israel. Nevertheless there are some general observations which can be made and conclusions which can be tentatively reached about the way in which they have influenced, and been influenced by, the life of the city and its unique political problems.

Comparison to Brussels reveals an interesting contrast. Since the 1950's Brussels has had an ever increasing community of foreigners living in its midst. Some are ex-patriot civil servants and other professionals either directly employed by the European Union (or its predecessors) or working in embassies, consultative firms or for special interest groups that are seeking to influence work of the Union or to obtain business from it. Their presence in Brussels is dictated by its role as 'capital of Europe'. Others are migrant workers. In all non-Belgian nationals make up a total of 15 per cent of the population of the city.

However, the involvement of this outsider community - large though it is - on the life of the city has been by and large non-political. The affluent members of the international community have contributed to changing patterns of social life and the environment (such things as increasing the cost of office space, encouraging the building of new homes for bureaucrats with the ability to pay high rents, or multiplying the number of smart 'expense account' restaurants) but they have taken no part in local politics.

However, the involvement of the comparable groups in Jerusalem has been of a very different character. Indeed perhaps the most noteworthy thing about the 'outside' groups in Jerusalem has been the fact that they have been quite unable to keep out of local political and social conflict. Today there is almost no such thing as a politically neutral 'outside' presence in Jerusalem. The uncertain status of the city and the on-going debate about its future, the importance of Jerusalem to the great monotheistic religions, and the tense nature of the day to day struggle between Israelis and Palestinians in the city and the region as a whole, have all combined to draw into controversy those outsiders, both individuals and institutions, represented in the city.
The relative importance of these different factors on deciding the attitude of 'outsiders' varies according to the specific group being considered. Thus since 1948 the position of the small, but important Consulates-General, which make up the diplomatic community in Jerusalem, has been of significance because of the uncertain status of the city and the political battle about its future which from a diplomatic perspective has involved not only the Israelis and Palestinians but the Arab world and the international community.

By contrast the position of the majority of the representatives of Christian Churches sent from outside the region (as opposed to that of local Christian priests or community leaders) has been mainly dictated not so much by uncertainty about political considerations as by the time honoured wish (dating back almost to the beginnings of Christianity) to keep control of the Holy Places and see that their co-religionists have access to them. Even this essentially conservative approach has, however, led to controversy since it lead many Christians to favour proposals for various forms of internationalisation of the city. In many cases ex-patriot Christians have favoured the Palestinian case for a share in the control of the city out of sympathy for their Arab co-religionists. A few strongly held theological beliefs have dictated support for the Jewish cause, among them the International Christian Embassy representing a number of 'Pentecostal' and evangelical groups in the United States and elsewhere, whose messianic view of Christian teaching has lead them to take an active part in promoting the Jewish presence in the city.

The third group of 'outsiders' in the city, the representatives of international agencies and Non-Governmental Organisations, owe their presence in the city to two sharply contrasting motivations. Those that are Christian or non-sectarian are concerned primarily with assisting the lot of the Palestinians both in the city itself and in the Palestinian territories more generally. On the other hand, the Jewish Non-Governmental Organisations in the city are for the most part devoted to the forwarding of specific agendas among the Jewish population of Jerusalem or, more generally, helping to develop Israel along lines which specific mandates from their various organisations based in the Jewish Diaspora dictates. A number of such organisations are at least in part staffed by individuals from North America who, while they may not be Israeli citizens are in most cases Jewish, Zionists and committed to the maintenance of the Israeli position in Jerusalem.

1. Living in 'limbo' - the role of the Consulate Generals of USA and of European powers in Jerusalem

A certain amount of historical retrospect is necessary if the role of the consulates in Jerusalem is to be properly appreciated. They first came into prominence in the nineteenth century when various powers were attempting to influence the fortunes of the decaying Ottoman Empire. By the end of the century the Austrians, Belgians, British, French, Germans, Italians, Russians, Swedes, and Spanish all had consulates which represented their national interests in Jerusalem and attempted to gain prestige and power within the city as well as to protect the interests
of their nationals and, where the opportunity presented itself, of groups of indigenous Christian inhabitants of Jerusalem whose religious affiliations lead them to look for help from foreigners of the same religious persuasion.

When the British Mandate was created in 1918, the looting party of the 1914-1918 war, Austria and Germany, saw their consulates closed. The Russian Boshevik Government was not recognised by the Mandatory authorities and Russia’s consulate too was closed, while the British consulate was subsumed in the Mandatory Government. However the remaining consuls were able to maintain their position (the Greek government was also permitted to open a consulate in view of the special position of the Greek Orthodox church in the city and the number of Greek nationals resident in Jerusalem) and the consuls (now known as Consul-Generals) were accredited to the Mandatory Government.

At the end of the Second World War, as it became clear that the British were likely to give up the Mandate, the Consulate-Generals, and in particular the Consulate General of the USA, became important centres of diplomatic activity. Not only did they monitor developments in the city and beyond but they were required to contribute to thinking about the various alternative plans for the future of the city then being canvassed.¹ As internationalisation of those parts of the city of religious and historical significance became an option supported by the United Nations, the Catholic Church, and the international community at large, the Consul Generals role, at least in potentia, was a significant one. They envisaged for themselves a role in the governance of the internationalised city and began to co-operate more closely together at a local level.

However, events turned out otherwise. In his memoirs Dov Josef, the man whom the newly formed Israeli government entrusted with the government of the city once the British left, writes of the situation in 1948: “These were the days when the last lingering doubt disappeared that the Jews could hold nine tenths of Jerusalem. For foreign diplomats living in the city, this was shock more violent than can well be realised by anyone who did not know at first hand the intricate pattern of power in Jerusalem. When the British mandate had ended, it had seemed both right and inevitable to the consuls that they should inherit, under a United Nations cloak of legality, the subtle overlordship of the city which was based on acceptance of both the Arabs and the Jews as backward peoples who required some form of trusteeship.”²

The resort to arms and the division of the city between Israel and Jordan, left the Consulate-Generals stranded in a city which, though theoretically might one day be under international supervision, was in the short run firmly in the hands of two national entities.³ Over the next decade the international community was to demonstrate its inability to realise its ambition to internationalise Jerusalem, despite resolutions in the United Nations, and the Consul-Generals (including that of the British, which was re-established in agreement with the Jordanian government) found themselves with little role to play. The majority, which were geographically in the eastern half of the city under Jordanian control, were placed under the day to day management of Embassies in Amman. The American Consul-General reported direct to Washington and the British to London. Some Consulate-Generals, such as those of
American, Britain and Belgium held office in both sides of the city.

In the West of the city the offices maintained by the United States and the European powers were of little significance. In 1948 the Government of Israel declared their half of the city their national capital in defiance of world opinion, and insisted on dealing direct with embassies even if most of these remained in Tel Aviv (in accordance with the decision of the international community not to recognise Israel's unilateral decision on Jerusalem). The small consular offices in West Jerusalem conducted only minor day to day business.

In the Jordanian East Jerusalem the Consul-Generals had a higher social profile but there too they were relegated to dealing with relations with Christian Churches, protecting the interests of their nationals, and writing reports on various issues concerning Jerusalem which could be used by their home governments as counterweights to the reports about Jerusalem issued from Tel Aviv. The latter tended to be more understanding of the Israeli position (and indeed it seems to be a universal tendency for embassies in countries in dispute to incline to see more clearly the interests of the country to which they are accredited than those of other parties to dispute).

The unification of Jerusalem after 1967 found the Consulate-Generals once more in a position of difficulty. The Israeli government took the view (officially at any rate, though in practice they were more pragmatic) that the Consulate-General's role had come to an end since the interests of the various countries they represented could be served by their embassies in Tel Aviv.

However none of the countries represented, lead by the United States, accepted this argument which if pressed to its logical conclusion would constitute a recognition of the right of Israeli to sovereignty over the whole city. Israel chose not to press the issue and the Consulate-Generals remained in office.

Since they were not required, or able to maintain regular contact with the Israeli establishment, they turned naturally to monitoring the situation of the Arab population in the Eastern half of the city. Over the last thirty years they have slowly developed a role which makes them, in practice if not in theory, an important diplomatic link between their various countries and the Palestinian people. Though this role has existed since 1967 it has been seen most clearly since the recognition of the Palestinian Authority and the beginning of the Peace Process. Since that time large sums of aid for the Authority have been channelled through the offices of the different Consulate-General and staff from the Consulate-Generals offices have been in daily contact with officials from the Authority in both the West Bank and Gaza and have travelled widely the area. Israel regards these activities without enthusiasm but - as far as can be seen without access to diplomatic archives - has not seen fit to actively intervene to limit them.

There is also no doubt that the Palestinian community in East Jerusalem which has found itself under direct Israeli rule and reduced to impotent minority status, has derived some satisfaction from the fact that the international community has retained formal representation in Jerusalem. The Consulate Generals have come to symbolise for Palestinians their hopes that one day they will resume what they perceive of as
their rightful place in the city. The United States Information Agency, the British Council and the French cultural agency have supported this concept of the future of the city by each maintaining two separate libraries and offices in the city, one in East and one in West Jerusalem.

Expatriate staff of the various Consulate-Generals tend to see the Israel/Palestine conflict in terms very favourable to the Arab interest. This is natural since their day to day contacts are almost always with Palestinians and as they travel about the West Bank and Gaza they are familiar with the negative side of the Israeli occupation. Indeed it is unlikely that the governments concerned make much effort to change this built-in bias - they prefer to receive reports from both Jerusalem and Tel Aviv (the former with a clear account of Palestinian attitudes, the latter better informed about Israel's point of view) and make their own assessments far from the immediate proximity of the struggle. An interesting example of this even handed approach was to be seen during a recent round of talks about the implementation of the Oslo accords in respect of Hebron (October 1996) when the United States delegation included both the ambassador to Israel, Martin Indyck, and the Consul General to Jerusalem, Edward Abingdon, both of whom worked with the chief American mediator, Dennis Ross.

A large question mark now hangs over the future of the Consul-Generals in Jerusalem. If the vote of the American Senate to move the American embassy from Tel Aviv to Jerusalem before the year 2000 is honoured by the American government, then the role of the American Consul-General in Jerusalem will become ambiguous indeed. The United States will, in effect, have recognised Israel's claim to sovereignty over a united city. If the European countries follow suit then the Consulate-Generals as they at present exist would become anomalies. If, on the other hand, the city is divided between Israelis and Palestinians then they will continue to exist either as embassies to the new Palestinian capital (if the Palestinians can establish their capital there) or as consulates in the Palestinian half of the city (if they cannot but achieve some form of autonomy).

However this may turn out, there is no doubt that over the last thirty years the presence of the European and American Consulate Generals in Jerusalem has become identified with the wish of the international community to deny Israel's claim to sovereignty over the whole city, to see the interests of the Palestinians in the West Bank and Gaza protected, and the status quo with regard to the Holy Places maintained. The quality of their staff and the resources available to them have increased (particularly in the last decade) in recognition of this role.

By contrast the very large number of diplomats in Brussels have not become directly involved in any direct way in the internal affairs of the city or of the region. Most are concerned directly or indirectly with the fact that Brussels is the headquarters of the European Union which is careful not to interfere in affairs directly related to Belgium, while those diplomats accredited to the government of Belgium itself have played a normal diplomatic role. The French Ambassador in Belgium is not seen as a protector of French-speaking Belgians nor the Flemish ambassador as having a watching brief for Flemings.
2. An age-old connection - the Christian presence in Jerusalem

In considering the Christian presence in Jerusalem it is necessary to make an initial distinction between those Christians who are citizens of Jerusalem and may be members of a variety of denominations and those who hail from outside the Holy Land and have temporary residence status. The latter include Orthodox clergy from Greece, Russia and elsewhere in Eastern Europe; Armenian, Coptic and Ethiopian clergy; and a large group of so-called ‘Western’ Christians who come from Europe and North America and include among their number both Catholics and Protestants.

It is the group which hails from outside Jerusalem which concerns us here. In many cases their motivation for being in Jerusalem is the need of their Mother Churches to be represented in the city, protect the Holy Places and make them available to pilgrims. A few Christian organisations are in the city because of their wish to extend help and support to Palestinian Christians in the city and, as we have already seen, some because they wish to help emphasise the claim of the Jewish people to sovereignty of the city. There are also many expatriate Christians who live in Jerusalem not as official representatives of their Church but for spiritual reasons: simply because it is the land where Jesus was born and taught.

2.1. The Greek Orthodox Church

The most ancient Christian community in Jerusalem is the Greek Orthodox Church. Today it is deeply divided between the lay members of its congregation, all of whom are Palestinians and permanent residents of the Holy Land, and the senior clergy who make up the Brotherhood of the Holy Sepulchre and from whose number the Patriarch is elected. All of these leaders of the Church come from Greece itself. The Church owns much property in Jerusalem and its leadership has for many decades been unpopular with the Arab laity. The hostility between the two groups was the subject of an official British Mandatory inquiry in the nineteen twenties which produced a bulky report which recommended various changes in the local organisation of the church designed to give the laity greater say in its affairs. These were not sufficient to change the balance of power within the Church where the Greek clergy clearly have the upper hand.

Since the Israelis took control of the city in 1967 the Greek clergy's leadership of the Church has become increasingly an object of suspicion to its Arab laity. This is largely on account of the sale or lease of lands belonging to the Church of Israel for building purposes. Large tracts of land in the city (on both the East and West side of the ‘green line’ which divides former Jordanian Jerusalem from Israel), have been acquired by Israeli interests and on some of them Jewish suburbs have been built. Up to 1993 the Greek leadership of the Church appear to be on good terms with the Israeli authorities and took little part in protests against Israeli actions within the city. However in that year a Greek-owned property near the Holy Sepulchre in the Old City was taken over by a group of Jewish extremists who claimed to be doing so
legally, as a result of an understanding they had with the person to whom the building was leased. The matter raised a furore which reached the international media but the legal question is complex and still hangs fire. This incident lead to a cooling of relationships between the Church leadership and the Israeli authorities, and the Greek Patriarchate joined other Christian leaders in several protests against actions which were considered detrimental to Christian interests.

2.2. The Catholic Church

The position of the Catholic Church in Jerusalem is complex and important. By virtue of the fact that the Catholics are the largest Christian community in the world and that Catholic political influence can be manifested not only through the Vatican but also through Catholic influence on political life in a wide range of countries - particularly in Southern Europe and Latin America - the Catholics have had an important role in thinking about the political future of the city since 1948.

In 1338 the Franciscan order were appointed by the Pope ‘guardians of the Holy Places’ - this followed a period when European Christian interests were not represented in the city in the aftermath of the Crusades. Subsequently a variety of other Catholic religious orders settled in the Holy Land. In the nineteenth century they involved themselves in social work among the Arab population of the Holy Land, much of which was motivated by a desire to make converts.

The leadership of the Catholic Church is represented in the city by no less than three significant figures - the Latin Patriarch who is the leader of the small Arab Catholic Church; the Apostolic delegate who represents the Vatican and since 1994 has held diplomatic status; and the ‘father custos’, the head of the Franciscan order in Jerusalem who has day-to-day responsibility for the Christian Holy Places under Catholic control. In addition the so-called Melkite or Greek Catholic Church which is orthodox in liturgy but which is in communion with Rome, has its Archbishop in Jerusalem and a small community in the city (and a much larger one in the Galilee).

In the period immediately after 1948 the Vatican vigorously advocated the internationalisation of Jerusalem. When it became clear that the international community lacked the will to impose such a solution the Vatican still continued to maintain that this was the preferred political solution at least in respect of the historic parts of the city. The Vatican refused to recognise the State of Israel diplomatically - in part at least - because of its concerns over Jerusalem. In 1967 the Vatican vigorously opposed the Israeli claim to sovereignty over the whole city and maintained this attitude till quite recently.4 This position was tempered in 1994 when Israel and the Vatican exchanged ambassadors and the latter tacitly recognised that Israeli control, at least over the West of the city, was irreversible.

The recognition of the Israeli government by the Vatican was not welcomed well by the laity of the Catholic Church in Jerusalem, almost all of whom were Palestinians. Their leader, the Latin Patriarch Michal Sabbah, himself an Arab, was in an awkward position but voiced no public opposition.

Throughout the last century the Catholic Church has supported various
charitable activities in Jerusalem, in particular religious orders have been active in education among the Arab Jerusalemites. Several of the leading schools for Arabs are run by Catholics, including the Terra Sancta School, Schmidt's Girls College and St. Joseph's. Important Catholic institutions devoted to biblical scholarship and archaeology have also been a feature of Jerusalem. Their relations with Jewish academic institutions are formally correct and the cases of certain individuals, warm, but particularly in the field of archaeology there has been considerable friction (most notably over the question of the handling of the Dead Sea Scrolls).

Since 1947 the Pontifical Mission to Palestine (established in that year to assist Palestinian refugees and financed directly from the Vatican), has been active among the Palestinian community and distributes annually about five million dollars of which only a small proportion is spent in Jerusalem itself and the rest in the West Bank and Gaza. The Catholic Relief Agency supported by the faithful has also been active in the area while the Greek Catholic leadership, with the support of the Vatican, have sought to provide social services and housing for their lay members in East Jerusalem in order to persuade them not to emigrate to Europe or America.

Two Catholic institutions in Jerusalem have developed a special role in relation to the life in the city. The large Notre Dame hotel-cum-hospice just out side the walls of the Old City and the Tantur Ecumenical Institute, situated on the former ‘Green Line’ on the Jerusalem-Bethlehem road, are both of them Catholic institutions. Both are presided over by senior clerics and both are happy to have their premises used as places for meetings arranged by those in the city who are anxious to promote dialogue between Israelis and Palestinians. There is an acute shortage of neutral venues for such dialogues since East Jerusalem has few public buildings which are suitable, and many Israelis are in any case reluctant to go to the eastern side of the city, while many Palestinians do not feel comfortable in Israeli owned hotels or educational institutions.

In these circumstances these two institutions which enjoy a certain degree of neutrality and autonomy (Notre Dame is claimed to be a diplomatic property and does not pay local taxes, though this claim is disputed by the Israeli authorities), can play a useful role. It is one which occasionally causes friction with the authorities or with those opposed to such dialogue. In 1995 a group of Palestinians seeking to enter Notre Dame was stopped by the police and a confrontation took place between its director and policemen, while in 1992 right wing pickets attempted at Tantur Institute to prevent the first meeting between Israelis and Palestinians - organised by the Israel Palestine Centre for Research and Information and attended by about 70 community leaders and experts from abroad- about the future of Jerusalem from taking place for many years. While the leadership of these two institutions aim to steer a neutral course between the two major communities in Jerusalem and certainly facilitate dialogue, it is doubtful whether right wing Israelis would accept that they are genuinely neutral.

The Church, its institutions and its clergy, have on the whole over the years tended to take up positions more acceptable to the Palestinians than to the Israelis. The relations of the Church with the Israeli authorities and Jewish institutions generally have for the most part remained formal and correct rather than warm. An
exception to this is the work of the ‘Sisters of Zion’ a religious order founded in the middle of the nineteenth century by a Jewish convert to Catholicism who specifically enjoined on his order the task of creating better relations between Christians and Jews. This mandate has been faithfully carried out by the sisters who have establishments in the East of the city on the Via Dolorosa and in the West, at the Ratisbon convent and in Ein Kerem. Many of them learn Hebrew and their attitudes are more positive to the Jewish presence in the city than that of many of their fellow Catholics.

There are, of course, frequent contacts over matters relating to religious pilgrimage/tourism between various Catholic groups in the city and the authorities, but even there, friction has taken place with respect to such questions as the role of the clergy from outside the city who wish to act as guides for pilgrim groups from their countries of origin, something which the Israeli licensed guides, most of whom are Jewish, have criticised, with the tacit support of the Israeli Ministry of Tourism. The proceedings at a recent conference in Jerusalem on Jewish - Catholic relations which was attended by very senior Catholic clergy emphasised the eagerness of the Catholic hierarchy to put relations on an ever better footing, but it was noteworthy that few representatives of the official rabbinical hierarchy in Israel attended. In the face of continued suspicion and hostility from the local Jewish religious establishment it is not surprising that relations between the Catholic priests and nuns in Jerusalem and the local Israeli population of Jerusalem remain correct rather than warm.

2.3. Other Christian Churches in Jerusalem

Most of the other Churches - Armenian, Russian Orthodox (split into two - one owing loyalty to the Patriarch in Moscow and the other to the Archbishop of the Orthodox Church in exile in New York), the Coptic, Ethiopian, and the various Protestant churches, have sought to steer a middle course. The degree to which they have been enlisted to support the claims of Palestinians in the city to a share in its governance or to engage in efforts to protect property or human rights from perceived or actual encroachment by Jewish extremist groups has varied. Churches with a substantial number of Palestinian congregates tend to be more active in their criticism of the Israeli authorities. An example of this is the Anglican Church in Jerusalem which is now lead by Palestinians. Its Bishop is active in promoting Palestinian concerns and one of its priests, Naim Ateek has written an influential book advocating a Palestinian ‘liberation theology’.

However, while much of the expatriate Christian community in Jerusalem has found itself closely involved with the Palestinian cause, there are exceptions. As has already been noted, the representatives of various Pentecostal and Messianic Christian groups mainly from the United States, whose theology is fundamentalist, are represented in Jerusalem by the ‘Christian Embassy’. The representatives of the Embassy are vociferous supporters of the Israeli case on all that is concerned with Jerusalem and indeed they go further than most Israelis in advocating (on the basis of biblical injunction) the restoration of the Jewish temple on the site at present occupied
by the Al-Aqsa Mosque on the Haram al-Sharif or Temple Mount. The Israeli government, and in particular governments dominated by parties on the right, are very well disposed to the Embassy, which each year brings several thousand of its supporters to Jerusalem for a march though the city. In October 1996, immediately after a serious of violent Israeli/Palestinian confrontations sparked off by the opening of an archaeological tunnel running under the Old City close to the Haram al-Sharif (Temple Mount), Prime Minister Natanyahu addressed the Embassy supporters and was greeted by them in rapturous terms as a man who combined strength with a desire for peace.8

The activities of the Christian Embassy are regarded without much enthusiasm by the rest of the Christian community in Jerusalem.

3. The role of ex-patriot Christians in the life of the city

The ex-patriot Christians living in Jerusalem are of many different stripes and hold a wide variety of opinion. Many have little social connection to Jews in the city and tend to live within their own communities. Some mix mainly with other expatriates.

Well meaning efforts on the part of a variety of bodies to bring Christians, Jews and Moslems together in ecumenical dialogue enjoy little popular support. The Interreligious Co-ordinating Council in Israel has sought with some success to bring together institutions and individuals interested in serious dialogue, but its activities have no appeal to the vast majority of Orthodox Jews in Jerusalem or to the Orthodox Christian churches. Much has been done by dedicated individuals such as Professor Marcel Dubois, a Dominican who worked for many years in the Department of Philosophy at the Hebrew University of Jerusalem, or Father Bruno Hussar, another Dominican who took a lively part in founding Neve Shalom, a unique Arab/Jewish settlement not far from Jerusalem, to promote understanding in intellectual and official circles, but much more remains to be done among a wider public.

The expatriate Christian community in the city, with occasional exceptions, has been unable to remain neutral in the political disputes between Israelis and Palestinians which play such a large part in the life in the city. It is a city where it is hard not to take sides and few expatriate Christians have been able to be genuinely neutral and recognise that both sides in the dispute about the future of the city have a case.

There are varying attitudes towards Christians, whether indigenous or expatriate, among the Israeli majority in the city. Some recognise the valuable role that individual Christians and their Churches can play in the life of the city. They attend concerts of Christian music, visit the attractive monasteries in the city, or enjoy dialogue with individuals from different cultural backgrounds, but many more are indifferent or actively hostile. Most Israeli Jews in Jerusalem live their lives without reference to the Christian community in their midst (both ex-patriot and indigenous) and are not so much hostile to them as indifferent. Acts of vandalism by Orthodox Jews on Christian property are reported on quite a regular basis.

The potential role of Christians as mediators is also limited by the fact that
relations between Christians and Moslems are far from ideal. While common opposition to Israeli claims has tended to bring Christians and Moslems in the city together, there is still much lingering fear and suspicion between them.

Christians from overseas living in Jerusalem form an interesting part of the social and political mosaic of the city but their future status and role is far from clear. While they cannot directly influence the outcome of events they do help to maintain the international character of the city. It is doubtful though, whether they can do much to mediate between the Jews and Moslems or between Israelis and Palestinians.

The valiant efforts of the certain Christian institutions, the Notre Dame Hospice, the Tantur Ecumenical College, the YMCA in West Jerusalem and the Scottish Presbyterian Church of St. Andrews, are valuable in themselves but their impact is limited.

Christian presence is, of course, especially important to the Palestinian community and to the future of the city as an international place of pilgrimage whose future is of concern not only to one group or people but to the world at large.

4. Seeking to help - International Agencies and Non-Governmental Organisations in Jerusalem

The casual visitor to Jerusalem may well not remark the number of International Agencies and NGOs represented in the city. The United Nations has, it is true, retained possession of the splendid former High Commissioner’s residence in Jerusalem and co-ordinates its presence in the region from there, but the building is separated from the city by extensive grounds and UN staff are not readily identifiable (with the exception of soldiers on leave from the various peace keeping forces). Many NGO offices of the international community tend to be discretely housed in former private homes in suburbs in East Jerusalem such as Sheik Jarrah or in the more affluent residential sectors of West Jerusalem.

Whatever the case may be, there is an substantial community of staff of International Agencies and NGOs in the city. The United Nations’ presence in the city owes its origins to efforts to mediate a settlement between Israel and its neighbours dating back to 1948. The staff of the UN and its agencies tend to be neither seen nor heard in the life of the city - their concerns are not so much with the city itself as with the possible points of friction on the borders of Israel where various peace keeping forces monitor breaches of Israeli-Egyptian or Israeli-Syrian or Israeli-Lebanese agreements; or in the refugee camps in Gaza and the West Bank where UN agencies, notably UNWRA, have played a vital role since 1948; or in working with Palestinians in the West Bank and Gaza to improve their lot.

In fact the great majority of the NGOs and international agencies in the city, other than those with a specifically Zionist agenda already referred to, owe their origin to a wish to help or work with Palestinians. Driven by humanitarian motives, a number of NGOs are active in the city and the surrounding West Bank. Among the more prominent ones are ANERA(the Arab American Refugee Agency), World Vision, the Lutheran World Service, and the Pontifical Mission to which reference has
already been made. As well as these large agencies there are a variety of smaller ones some financed by international organisations, others with church connections. All work with Palestinians and many employ expatriate staff - sometimes as volunteers. They engage in a variety of tasks, some of them in education, some in social and health, yet others in the provision of basic infrastructure.

In a separate category are the local offices of the World Bank and the European Union, both of which are in East Jerusalem and both of which have been established relatively recently to handle aid to the Palestinians in the West Bank and Gaza. There are also several Moslem Non-Governmental Agencies working in East Jerusalem but they keep a very low profile and have no contacts outside the Moslem community.

Contacts between the Israeli authorities with agencies and NGOs working among the Palestinian community, tend to be formal. Like the diplomats stationed at the Consulate General's offices, their staff spend most of their time working with the Palestinians who are their partners in work and their social contacts when they are off duty.

While Non-Governmental Agencies working in East Jerusalem tend to try to keep out of politics there have lately been signs that as a group they are becoming more closely aligned to Palestinian points of view. A body with some 30 or so members, the Co-ordinating Committee of International NGOs working in the 'Occupied Territories' (CCINGO), most of which are based in Jerusalem, has been established. Its most recent statement (dated 10th of October, 1996) is headed 'the Crisis Continues' and contains a forthright defence of Palestinian actions relating to the disturbances arising from the opening of the tunnel near the Haram al-Sharif (Temple Mount).

The presence of the NGOs dedicated to assisting Palestinian development is much appreciated by Palestinians. The expatriate staff of such agencies, and the many short-term volunteers who work with them, play no part in the life of West Jerusalem and most of them know very few, if any Jews, other than those they meet in the course of their duties. They play little or no role as a moderating influence on social conflict within the city.

The Jewish Non-Governmental Agencies in the city are involved in a whole variety of activity related to the cities' Jewish community. Some are concerned with charitable or social work, others have religious aims. There are non-residents among their staff, often in senior positions, but for the most part they are committed to the support of Jewish sovereignty over Jerusalem and play little part in promoting dialogue in the city. Even an organisation like the Abraham Fund or the New Israel Fund which have as one of their primary purposes the promotion of better relations between Arabs and Jews within Israel proper are reluctant to commit funds to work in the Arab sector of Jerusalem which would involve them in thorny political questions.

One group of agencies deserve special mention, these are the German cultural foundations, the Adenauer, Ebert and Zeidel foundations all of which work in Jerusalem and have senior ex-patriot staff. They have done a good deal to promote dialogue by offering financial help to those engaged in such activity, and tried hard to reach a position of genuine neutrality. It is interesting to note that in the last three
years both the Adenauer and Ebert funds whose offices and staff were based in Israel proper have established offices in Ramallah and East Jerusalem respectively.

Conclusions

Unlike the international community in Brussels, that in Jerusalem (whether diplomatic, religious, or representing International Agencies and NGOs) is closely involved with social and political conflict in Jerusalem. On the whole for historical reasons the majority of its members (other than those representing Jewish organisations or fundamentalist Christians) has tended to be opposed to Israeli plans to keep the city united and under its sole sovereignty. Socially it has tended to play a much larger role in the life of the Palestinians of East Jerusalem than in that of the Jews of West Jerusalem.

In spite of efforts such as those mentioned above the role of the foreign community as a mediating influence on conflict in Jerusalem is less important than might have been hoped. Little can be expected from the majority of the ex-patriot community in Jerusalem since its members are for the most part ‘parti pris’ and do not promote social intercourse, let alone actively try to play a mediating role.

They have, nevertheless, an important part to play in maintaining the cities’ international character and helping to ensure that it does not become a narrow, sectarian, and provincial society. The fact that individuals do take sides and ardently advocate the cause of either Israeli or Palestine serves as a small demonstration, if one were needed, of the depth and emotional vibrancy of the conflict. It is a maelstrom which sucks in even those who are not directly concerned and turns them into advocates of one cause or another rather than an element in the social make up of Jerusalem which promotes understanding. Most foreigners in Jerusalem do not isolate themselves from local concerns, in marked contrast to those in Brussels and other less tense and fragmented cities.

Notes

This article is based in part on the author’s own experience as an official of the British Council working in Israel (from 1958 to 1962 and again from 1968 to 1974) and on conflict-resolution at the Davis Institute for International Relations at the Hebrew University, Jerusalem, from 1993 to 1996.

1 See: Feituchheim, Y. 1987[pass.]. U.S. Policy on Jerusalem. Greenwood Press. Feituch has a wealth of information on the way in which the proposals for the internationalisation of the city gradually faded into unreality to be finally abandoned in 1967.

2 Joseph, D. The Faithful City.


4 Address by Renato R. Martino, Permanent Observer of the Holy See to the United Nations,

5 For further information on Catholic social and educational activities see: Egender, N. Father. 1996.


8 'The Future of Jewish-Catholic Relations in the World and in Israel/the Holy Land' held in Jerusalem in February, 1996.

PALESTINIAN-ISRAELI CONTACTS ON THE MUNICIPAL LEVEL

Daoud Kuttab and Sarah Kaminker (IPCRI)

Introduction

Municipal operations touch the lives of every Palestinian family living in East Jerusalem. Each family receives a municipal real estate tax - armona - bill yearly and almost all of them go to City Hall to get clarification and to pay the assessment. Many families send their children to municipal schools; almost 21,000 Palestinian children (43% of all the school age children) attend the public school system. Almost all of the 21,000 Palestinian housing units in East Jerusalem are overcrowded or substandard and if their owners decide to build new homes they must obtain planning information and building licenses from the City Engineer's Office. If they find that they may not build legally on their own land but must build where construction is not permitted, they will make acquaintance before long with the Building Supervision Department and the municipal legal system.

The members of Palestinian families are continuously aware of municipal authority and their decisions are influenced by municipal policy. But in the course of this engagement with municipal processes the Palestinians establish only limited contact with Israelis. The municipal service delivery system has been constructed in such a way as to keep a distance between the Israeli and Palestinian sectors of the population.

In the following report we will describe the methods we have used to understand the system by which the population groups are kept apart, the characteristics of the operative municipal departments that deliver services to the Palestinian population, how these characteristics have led to a communication gap between the two sectors of the population and finally we shall make some suggestions for closing the gap in the interests of sharing some parts of our joint lives in the city of Jerusalem.

We interviewed personnel in all of the departments cited above, Israelis as well as Palestinians. The interviews were free-wheeling, allowing the interviewee to address the general subject of how to improve the delivery of municipal services to the Palestinian population and to describe the nature of their contacts with that population. We also interviewed senior Palestinian leaders and officials, including the director of the Islamic Waqf, neighbourhood leaders and the head of the Chamber of Commerce. In the course of our work we have had many opportunities to meet with service-users themselves, the men and women 'in the street.'

We intended to investigate at least one department—Social Welfare—that offers services on a voluntary basis to people who choose to take advantage of them. However, the City Manager, Yaacov Efrati, did not permit department staff members at any rank to speak with us and chose not to speak to us himself.
1. The municipal services selected for study

Three operating municipal departments - the Municipal Treasurer's Department of Taxation - *Arrona* -; the Planning Authority's Departments of City Planning, Licensing, and Building Supervision; and the Educational Authority (Man'hi) - were selected for detailed investigation because almost all of the families in East Jerusalem must use the services they provide.

The use of these services by the Palestinians can be said to be either totally or partially involuntary. In the case of taxation there is no escape: each family in Jerusalem must pay real estate tax or suffer harsh economic penalties and/or the loss of social services that are given only to those who can produce a receipt for the payment of *arrona*. Using the planning and licensing services may be avoided, but only on penalty of having your illegally built house destroyed, in which case you will willy-nilly face the building inspectors and the municipal court system. With regard to educational services, a family may select to send its children to private schools, but costs are prohibitive, particularly among the lower economic strata of the Palestinian population. In addition, a traditional village society often considers it advantageous to use the municipal school located within each Palestinian neighbourhood rather than send their children to private schools located far from home.

The chairman and/or the professional director of the three existing Palestinian neighbourhood administrations (Minhalot) were contacted. The Minhalot were established in 1980 to promote community organisations in Jewish and Arab neighbourhoods that would represent their residents and negotiate with municipal officials for the delivery of differentiated services based on need. Does a Minhelet organisation influence which services and the method by which they are delivered to community residents and does it affect the nature and quality of the contacts between Palestinian residents and the municipality? Creating semi-autonomous Minhalot in all of the Palestinian neighbourhoods has been suggested as a way of decentralising municipal government that could be acceptable to both Israelis and Palestinians who will be negotiating the final status of Jerusalem.

2. The administrative structure of municipal departments

Each department is divided into sub-departments that are responsible for specific departmental functions. The department has a director to whom each of the sub-department directors are responsible. With the exception of Man'hi, none of the department or sub-department heads are Arabs, but every department has a staff of Arab workers who deal exclusively with the Arab population and provide all of the functional services that the department delivers to all the residents. The Palestinian staff provide Israeli officials with a buffer and a sponge that absorbs the anger of the population.

Man'hi has a sub-department for each educational function: one for kindergartens, one for elementary schools, for high schools, and so on. These sub-departments do not operate in the Arab sector. Rather, all of the educational functions of Man'hi are lumped together into an Arab education sub-department.
This simple administrative structure ensures that, with rare exceptions:

1) Service delivery policy for the Arab population is made exclusively by Israeli officials who have little or no contact with the population their policies are meant to serve.

2) Service delivery policy is conveyed to the Arab population by Arab staff members. They alone have direct contact with the population and its problems but they have no power to use their knowledge to influence changes in policy.

3) The Palestinians that must be in contact with the Arab staff members are well aware that the people they meet in City Hall have no power to effect change or to make accommodations to meet their needs. These staff members convey information and try to make that information palatable to its recipients, and they must bear the brunt of the initial response. However, everyone is aware that protest at this level is futile and there are astonishingly few vents for the release of the resulting frustration.

2.1. Policy-making for the Palestinian population

Policy makers in each of the departments studied are in fact cut off from intimate knowledge of the problems of the Arab population they are intended to serve. The administrative structure does not give them access to their Arab staff members who do indeed possess that intimate knowledge. To fill the vacuum they may use either one or more of the following techniques: 1) make one of the Israeli officials who reports directly to the department director responsible for co-ordinating the work of the Arab staff (the Department of City Planning), 2) establish a sub-department that deals only with the Arab population (the Education Authority, which has placed an Arab as director of the sub-department, whereas in the past the head of the sub-department was an Israeli); 3) refer all difficult problems that require negotiation with the Arab population to the Mayor's Advisor on Arab Affairs (Education, City Planning and many other departments).

There are thus few or no directives coming in from the field to the department heads whereas the only directives coming in to them from the City Council, where the Palestinians have no representation, are actually detrimental to the Arabs. (The City Council approves or makes changes in Town Planning Schemes in the Arab neighbourhoods; it allocates funds to the Arab school system; it reviews on a quarterly basis how much money has come into municipal coffers from taxes paid by the Palestinian population.) There is only one party on the City Council - Meretz - that often takes stands in favour of changes that would benefit the Arab population, but this party has little influence since it has only four out of the 31 members of the Council and it does not in fact represent the Arab population. Each of the three departments that were studied in depth expressed the view that they could not make changes in policy because the Arabs have no representation on the City Council.

Meron Benvenisti, a former vice-mayor of Jerusalem under Mayor Kollek, states that the "Israeli Mayor was not enthusiastic about having them participate: 'They will disturb me in my work.' But this did not prevent Kollek from 'complaining that the Arabs have not absorbed the democratic tradition, and their refusal to participate in the process of Israeli democracy only harms them because it doesn't permit them to fight by themselves for their own interests.' The Mayor often used this argument to support his
refusal to make changes requested by this author, when she was a member of the City Council.

Staff members in the departments studied claimed that they would be able to make policy changes favouring the Arab population if they were to get the necessary directives from the City Council. For example, the Department of Taxation reports that each developed lot in the city is assessed on the basis of a matrix that assigns a grade to the neighbourhood in which the lot is located and to the quality of the building. The neighbourhood grade was assigned many years ago and reflects the conditions then existing. Since then the Jewish neighbourhoods have been improved physically while the Arab neighbourhoods have not and the gap that now exists between the Jewish and the Arab neighbourhoods does not find expression in the grades assigned to the neighbourhoods. What was considered a No. 1 zone in East Jerusalem long ago is no longer comparable to a No. 1 zone in West Jerusalem where upgrading has taken place and yet the tax rate remains the same for all No. 1 zones. This condition leads to heavy real estate assessments in the Arab neighbourhoods that are similar to those in the Jewish neighbourhoods although development and infrastructure conditions are quite different. The staff concedes that the only way to make assessments that reflect the true state of existing conditions is to change the grades in the Arab neighbourhoods, but, they claim, their hands are tied because the City Council will not agree to consider making the necessary changes. Arab City Council members would have the right to insist that the issue be raised for general discussion and the professional staff would be forced to prepare a proposal for zoning changes that would serve as the basis of public discussion on equitable zoning.

The Education Authority responds to the demands of the City Council for improved service to each of the constituencies that the various parties represent. It is not subject to any pressure from the Arab population, except to that pressure that comes from the field and is brought to the attention of the department by its own director of Arab education. He, however, has no political power. By contrast, the ultra-Orthodox department of education is supported and encouraged by its 12 representatives on the City Council.

The Office of the City Engineer is answerable not only to the City Council but also to all of the ministries that constitute the Interministerial Committee for Jerusalem, which establishes planning policy for the city. Planning policy is based on a strategy of maintaining the existing demographic balance between Arabs and Jews, usually cited as 72% Jews and 28% Arabs. This intention dictates the nature of the plans prepared for the Arab sector, which insists that only a limited number of housing units will be permitted in each of the existing Arab neighbourhoods. Each planner of an Arab neighbourhood - always an Israeli, never a Palestinian - is told by the Department exactly how many new housing units may be built on the land of the community and how much of the land owned by the community may be included in the Town Planning Scheme (TPS). The TPS must show exactly which land may be used for residential construction and the density that will be permitted on residential land. In order to stay within the boundaries of the government quota for new housing imposed on the neighbourhood the planner must use the lowest density zones and restrict the amount of land to be zoned residential. Designating the bulk of the land of the neighbourhood as shetach nef panach, where, in the interest of keeping
open views on the landscape, construction of any kind is banned, is the most effective and widely used restrictive tool.

That the amount of new housing permitted has no relationship to the needs of the population was made clear when the City Engineer explained that she had left a populated ridge out of a neighbourhood plan because its inclusion would raise the number of housing units above the quota assigned to the neighbourhood. The quota, she explained, is the government tool for keeping the demographic ratio in Jerusalem at 72:28. The Chairman of the Subcommittee added that the quota for the neighbourhood under consideration is 1,250 new housing units and were it not for the quota it would have been possible to allow for 2,000 additional new units. Whenever an arbitrary quota system serves as the basis for neighbourhood planning the professional planners in the Chief Engineer’s Office are unable to plan according to the needs of the residents of the community.

Adnan Husseini, the head of the Islamic Waqf that controls major portions of the land in East Jerusalem, claims that the Planning Department maintains no connection whatsoever with their offices, even for the purpose of information-gathering. ‘We at the Waqf do not request any services from the municipality because we ourselves carry out our responsibilities.’ In other words, the Waqf has solved the problem of lack of contact by dispensing with any of the services that the municipality gives and behaving as though the municipality is irrelevant.

Although services are delivered separately and according to different standards to the Arab and the Jewish population, the municipal budget, which is an operative budget divided among the various departments, does not show separate lines for Arab services. The land of the community and the quantity of the land owned by the community may be included in the Town Planning Scheme (TPS). The TPS must show exactly what land may be used for residential construction and the density that will be permitted on residential land. In order to stay within the bounds of the government quota for new housing imposed on the neighbourhood the planner must use the lowest density zones and restrict the amount of land to be zoned residential. Designating the bulk of the land of the neighbourhood as shetach nof patouch, where, in the interest of keeping open views on the landscape, construction of any kind is banned, is the most effective and widely used restrictive tool.

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For example, the Education Authority budget has separate lines for each of the sub-departments but none for the Arab educational sub-department. It provides a budgetary line for special education and for pre-school education, two fields which are almost totally lacking in the Arab sector. In June 1996 the Authority announced that it was going to convert all elementary schools, except the Arab schools, into autonomous institutions with increased budgets.

It is thus extremely difficult to judge how much of the budget of each department is actually dedicated to the Arab population. According to Aaron Sarig, a former City Manager of Jerusalem, there is a directive to each of the department heads that 25% of their budget must go toward providing services to the Palestinian population. The City Council approves the budget and oversees its operation but because of its composition is either unable or unwilling to see that this budgetary directive is in fact applied in practice.

2.2. Palestinians connect with other Palestinians

Each of the three departments studied maintains a staff of Palestinians to whom the Palestinian seekers of service are directed. The Palestinian staff of the Department of City Planning serves as an example of how this system provides a buffer between the Israeli policy makers and the Palestinian population. A Palestinian seeking planning information as to whether he may build on his property is given this information by a Palestinian. The answer is no in one out of every 10 requests for information, and there the matter ends. (If the answer is yes, the supplicant writes a letter to the Israeli head of the Information Sub-department and gets an official information letter in return. No personal contact between Jew and Arab takes place.) A staff of Palestinian planners advises the supplicant how to prepare a plan should adjustments in his land be necessary to gain a building license. Approval for any adjustments is gained by direct contact between the Israeli supervisor and the Arab planning staff member who makes the case for the supplicant.

Expropriation documentation is prepared by the Palestinian staff and the technical processes by which building licenses are dispensed are also in the hands of a Palestinian staff. They are not empowered to influence the course of events.

These Palestinians in fact act as a buffer and sponge between the Palestinian population and the Israeli staff. They must deflect the opposition or despair of the supplicants and can do little or nothing to change the existing situation.

The head of the staff that issues housing demolition orders in East Jerusalem is an Israeli. On field visits he is accompanied by a Palestinian staff member, whose presence in
effect protects the Jewish supervisor from coming to harm and signals to the Palestinian
target of the demolition order that he has no recourse. The municipality does not cancel
demolition orders but it sometimes simply doesn’t execute them, particularly in cases
where the Palestinian home owner has made it his business to meet personally—again and
again—with the Jewish supervisor.

The system has a built-in open invitation to petty corruption, and if, in fact, the
invitation is not used, its very presence arouses suspicion in the Palestinian population.

The head of the Arab taxation office, Ahmed Salman, pleads the case of petitioners
who may have been wrongly overcharged before his Jewish supervisors. But he also is
charged with implementing the punishments to those who have not paid their bills (cutting
off the family water supply, garnishing family property or wages).

There is a shortfall of 380 classrooms in the Palestinian municipal school system.
The director of Man’hi claims that as long as there exists such a critical lack of classroom
space he will be unable to provide basic, much less equal educational services to
Palestinian children. He was, thus, motivated to seek and obtain from the central
government a financial commitment to a building program that would close the gap.
However, in order to construct the new classroom space the right to use community land
must be negotiated with Palestinian community leaders. Rather than involve Man’hi in
these direct contacts with the Palestinian population, the responsibility for conducting
direct negotiations was transferred out of the Department of Education and into the Office
of the Mayor’s Advisor on Arab Affairs. As of this date, only 10 of the classrooms have
been built. The residents of Issawiyeh, where the largest shortfall exists (64 classrooms are
lacking), has asked repeatedly to conduct land negotiations directly with the Department
of Education, to no avail.

These administrative tools protect the Israeli staff from having to deal with the
messy situations that arise from implementing policies that do not reflect the real needs of
the Palestinian population. Perhaps even more important these tools serve to restrain and
block any organised Palestinian protest.

2.3. Empowering the Palestinian population to press for change

We believe that the system described above is geared to deflating incipient organised
protest movements among the Palestinian population. Only a few protest movements
against municipal action have been undertaken by the Palestinian population, but the lack
of empowerment that stems from non-representation in the City Council has made these
efforts successful only in part and therefore difficult to replicate. In addition, lack of direct
contact with Israeli policy-makers have forced the Palestinians to direct their protests to
the media, to the United Nations and to the consulates of foreign powers - but not to
Israeli officials.

Liaison with the Arab population has been conducted through the traditional system
of contacting the Israeli-appointed village leader (mukhtar). The head of the Arab
Thought Forum, Abed Abu Arafah, describes why the old system has fallen into disrepute
and voices the widespread feeling that it encourages Palestinians to believe that they can
get what they need only if they have ‘special protection.’ ‘When the municipality notices
that a well-known mukhtar has some needs, they try to achieve all his needs while expecting him to meet their requests.' It is clear to the Palestinians that the mukhtar system not only does not empower them but actually is a tool for disempowerment. New, non-traditional contact systems have developed over the years in the hope that they will lead to empowerment.

Palestinian political leaders connected to the Palestinian national movement have been ineffective when it comes to dealing with the needs of their local communities and have instead concentrated their energies on national issues.

Local leaders have risen in some of the neighbourhoods who are recognised by the municipality. They walk a tight rope between supporting national Palestinian goals and working through the system. They gather around themselves a group of community activists who are willing to make neighbourhood policy and devote time and energy to implementation. Darwish Darwish, the head of the neighbourhood organisation in Issawiye, represents his people before Israeli and Palestinian officials. He and his neighbourhood organisation reach out to any group, Israeli or Palestinian, that is willing engage in the process of joint action and sharing of power. Frustration stems from the fact that they have no long-term reliable backers.

The chairmen of the Minhalot, who entered the city-wide system of local self-management for the purpose of obtaining direct contact with Israeli decision-makers, can in fact meet with the highest levels of municipal staff, including the Mayor. But they do not believe that they have thereby acquired the power to influence the course of events in their communities. Mohammed Yusuf Abu el Hawah, the chairman of the A Tur neighbourhood self-governing council, claims that he gets to meet with secondary officials only, who make promises that are not fulfilled. Mr. Abu el Hawa raises money for neighbourhood improvements and is willing to build them with his own personnel, provided that the municipality agrees to supply material. Promises have been forthcoming, but not assistance.

Muhammed Masri, the chairman of the Bet Hanina minhelet, enjoys continuous contact with municipal decision makers. He and the activists in his community have absorbed the administrative culture of the municipality and can make use of it to further their own interests. They prepare meticulously for each negotiation session with Israeli decision-makers and Masri believes that the processes of decision-making acquired over years of contact have made it possible for the community to work for its own interests in any political setting. He, too, as Mr. Abu el Hawah, has found that it is not in his power to change the discriminatory policies that underlie service delivery to the Palestinian population.

The ability of the Minhalot to engage with Israeli decision makers does not enable them to further those interests of their residents that are in opposition to overall municipal objectives with regard to the Palestinian population, particularly in the area of land use and protection of property rights. In the existing political situation, the Arab Minhalot operate with a built-in contradiction: they have the ability to negotiate without the ability to gain equal rights. We question whether the privileges granted the Minhalot do not also act to stymie organised protest that might result in the loss of privilege.
The director of the Education Authority, Nissim Salomon, believes that protests have not been organised because Palestinians are basically ‘non-consumers’ who do not insist on their rights as consumers of services. Only one successful public protest was ever organised against the Department of Education - the leaders of Jebel el Mukabr ran a well-publicised 2 1/2 hour march to school of the children of the community who were, against the law, not being provided with public transportation. Other protests (for example, against mistreatment of the graduating class of Issawiye) were stymied by in-house efforts of the Arab and Jewish staff.

Taxation policy was challenged by a very well-organised group of Palestinian businessmen who used a variety of methods to achieve their goals - a protest march, a protest tent to which were invited politicians and public figures who might be willing to help, the development of a court case and negotiations with the Israeli policy makers in the Department of Taxation. Only some of their goals were achieved. It is interesting to note that these efforts were undertaken outside of the traditional bodies that have represented the interests of the Palestinians in the past, such as the Chamber of Commerce.

A number of efforts have been made to organise a protest movement of the ‘homeless’ (those whose housing units have been or are about to be demolished), none of them successful. Currently the neighbourhood of Issawiye is developing a protest plan with the encouragement of Jewish and Arab political parties who have offered to be their source of ‘empowerment.’ The fear of failure, however, is very strong and may curtail some of the planned efforts.’ You can’t be accused of failure if you haven’t done anything.’

The fear of failure is hard to overcome when one considers the enormous number of objections that have been submitted to no avail by Palestinian residents of neighbourhoods who have been provided with defective and politically motivated town planning schemes. Hundreds of residents of each of the Arab neighbourhoods have submitted opposition, either as individual landowners or as members of a collective of home-owners, and in only a few insignificant cases were their objections incorporated into the plan.

The only case where a community-organised opposition to a plan created a basic change in the plan was in the neighbourhood of A Tur, where the local Minhelet had the backing and active support of a powerful member of the City Council who had been given the responsibility for developing the Jewish and Arab Minhalot and had to show results.

There is therefore a feeling of deep frustration on the part of the Palestinian population. The head of the East Jerusalem Chamber of Commerce, Fayed Barakat, voiced this frustration: ‘We always protest. But we get no answer. Not even one promise do we get. We request to improve our conditions and services. The Israelis always think politically. We do not deal with politics.’

3. Summary

1) The municipal budget does not earmark funds for specific services in East Jerusalem, rather, the entire budget is divided among the various municipal departments. According to a former director-general of the municipality, Aharon Sarig, all the departments are told that they should devote 25% of their budget to delivering services to
East Jerusalem. When preparing the yearly budget the City Council does not ask the departments to show how they intend to use 25% of their budget in East Jerusalem. Nor does the City Council ask for a report at the end of the fiscal year on how they used this money in East Jerusalem. In fact, no department uses 25% of its budget for service supplying in East Jerusalem. It could therefore be considered that some part of this 25% is an addition to the departmental budget for supplying services to Jews.

2) Each service delivery department has a special section for Arabs that has low-level staff made up of Palestinians. Some of these staff-members do their best to help their community but the end result, whether they realise it or not, is that they are convincing the people to accept an unjust system and discouraging them from protesting discriminatory practices. They act as the buffer zone between the local resident and the Israeli official. Rarely does a Palestinian service-seeker get the chance to meet with the policy maker. Direct contact is almost always with a fellow Arab who in the end has to hold onto his own job by following the orders of his Israeli boss. It is assumed by the Palestinian population that these low-level Arab officers get certain concessions from their bosses, enough to keep them in line.

3) The absence of Palestinians on the City Council keeps them completely out of the loop when it comes to actual policy-making. The Palestinian strategy of officially and collectively boycotting the municipality while unofficially going to the municipality on an individual basis, leads to collective 'schizophrenia' that prevents organised action. Although there is a lot of Palestinian unilateral statements and protests- often using the foreign media and diplomats-there is almost no bilateral contact to deal with the same issues.

4. Recommendation

It is our conclusion that the system that exists for Palestinians in East Jerusalem (be it official or unofficial) can't be addressed from within the existing structure that doesn't include Palestinian policy input and decision making. Only a major political change with regard to how municipal decisions are made, can bring the Palestinians of Jerusalem out of the bind that they have been in for so many years. We don't believe that what is required is a cosmetic change within existing departments but rather a change in how policy is made.

The inferior situation that Palestinians find themselves in is not a result of an inefficient person or department but a general outcome of a system that Palestinians are excluded from. Irrespective of the reason, Palestinians are not involved in any stage of decision making. They are so frustrated that they are not even involved in making any direct protest to the Israeli municipality about the manner in which policy and services are being formulated and implemented.

While the policy of non-recognition of Israeli unilateral actions regarding Israeli annexation have international legitimacy, this policy is a catch 22 for Palestinians. For almost 30 years Palestinians have not participated in the municipal elections and, therefore in policy-making, because they have refused to recognise and legitimise the Israeli annexation decision of June 28, 1967. While this policy has been in tune with international
law, in real terms it has meant that Palestinians have given the Israelis a free hand to do
what they wish and thus they have suffered from not being involved.

The negotiations for the final status between Israelis and Palestinians (which include
negotiations for Jerusalem) offer a perfect opportunity to break out of this cycle. This plan
must include two items that will be implemented simultaneously. Even before reaching the
stage of serious discussion about Jerusalem Palestinians and Israelis can agree on an
interim plan. Palestinians will not feel politically obliged to boycott Israeli municipal affairs
and therefore participate in the city's municipal activity (which the existing Israeli law
allows) without such a participation being considered legitimising the annexation of East
Jerusalem. At the same time, Israelis will agree not to make any changes on the ground
during this interim period.

Palestinians can suggest a package plan for a fixed period of time during which both
sides agree:
1) to suspend all actions that negatively affect the future status of the city;
2) that Palestinian participation in municipal elections will not prejudice their position
during final status talks.

Since Palestinians officially support an open city, we feel that this is the best way out
of the situation that Palestinians find themselves in. Every day that Palestinians don't
participate in municipal decision making they lose. Decisions affecting Palestinian land,
zoning laws, housing policy, education, economic development, tourism and distribution
of resources are being made in city hall by those who are represented through municipal
elections. These representatives who are non-Arab are deciding policy regarding
Palestinian residents of the city in whichever way they wish. It is clear that the overall
decisions of these non-Arab councillors has been to the detriment of one third of the city's
population.

Participation in elections for city hall is only one way to influence policy, but unless
Palestinians can resolve this political stalemate all other means of change will most
probably be ineffective. Because even if a decision to participate in municipal elections is
made long before elections, such a decision will have its own dynamic that will lead to the
consideration of a variety of possible solutions that both sides can live with. For example
such a decision will be a political breakthrough allowing Palestinians to start organising
themselves and preparing the issues and people who will defend these issues at the various
service areas of municipal policy making.

So, while today Palestinians are not allowed to open offices for the Palestinian
Authority in Jerusalem, they are allowed to open offices dealing with municipal issues.
With such a political breakthrough they will not only open offices but will start the
important and necessary grass-roots work, organise the communities and reach consensus
among them as to their planning priorities and needs. In other words we need to find a
way to make participation in municipal decision making not only legal but politically
viable.
Notes

1 There are 21,071 Palestinian housing units in East Jerusalem for a population of 160,800, or an average of 7.6 persons/unit. The average size of a unit in East Jerusalem is 70 sq. m., or 9 sq. m./person. The national standard for public housing is 20 sq. m./person. Source: Jerusalem Statistical Yearbook, 1993.

2 Benvenisti, M. 1996. A Place of Fire. Tel Aviv, Dvir Publishing House: 90. [Hebrew]


4 Protocol of meeting of Municipal Town Planning and Building Subcommittee, 5.4.93.

Annex

1. Names of interviewees who agreed to have their names cited

Abu Arafah, Abed Arrachman. Engineer. Chairman, Arab Thought Forum

Abu Dheim, Hisham. Engineer.

Abu el Hawah, Muhammed Yusuf. Chairman, A-Tur Self-Governing Council (Minhelet)

Al Husseini, Adnan. Engineer. Head of General Waqf in East Jerusalem

Barakat, Fayed. Chairman, Jerusalem Chamber of Commerce

Darwish, Darwish. Chairman, Neighbourhood Committee of Issawiye

Ladijansky, Rita. Assistant to the Director of the Department of Taxation

Masri, Muhammed. Chairman, Bet Hanina Self-Governing Council (Minhelet)

Sabbagh, Yousef. Engineer

Salman, Ahmed. Director of Armona in East Jerusalem. Chairman, Bet Safafa Self-Governing Council (Minhelet)

Sarig, Aharon. Lawyer. Formerly, Director-General of the Municipality and Mayor's Advisor on Arab Affairs

Solomon, Nissim. Director, Education Authority (Man'hi)
2. Municipal service-delivery to the Palestinian population of Jerusalem

The research team will investigate the methods available to the Arab population for obtaining the services supplied by the Municipality of Jerusalem. We shall be concentrating on the services that are particularly critical in the daily life of the Arabs of East Jerusalem. They are:

1) Education
2) Municipal Taxes
3) Housing and Building Licenses
4) Civil Affairs
5) Religious Affairs

The team will address this issue from both the Israeli and the Palestinian point of view. Daoud Kuttab will research the issue from the Palestinian point of view and Sarah from the Israeli, and both will interview the Director General of the Municipality or the Mayor after the fact-finding process has been completed. The following sources and methods will be used to describe the existing situation and to investigate the Palestinian point of view:

1) Existing documentation and information
2) Interviews with key figures that are not part of the Municipal establishment but have maintained over the years open lines of communication with the Municipality for the purpose of problem-solving, such as the head of the Waqf, church leaders, and the head of the Chamber of Commerce.
3) Interviews with Arabs who are key Municipal figures in the service-delivery system, such as the director of the Municipal Department of Arab Education.
4) Interviews with community-based leaders in Orient House, the heads of local neighbourhood committees and Minhalot and Jerusalem-based engineers, architects and town planners.

Sarah Karminker will interview policy makers and staff members who are involved in supplying each of these services to the Arab population. The work in the Jewish sector will parallel the efforts in the Palestinian sector. She will, therefore, interview the following categories of municipal operators who supply services to the Arab population:

1) Leaders of political parties represented in the City Council that maintain extensive contacts with the Arab population, such as Meretz, as well as parties that do not.
2) Former advisors on Arab affairs to the Mayor.
3) Policy-makers and practitioners in the City Planning Department who are responsible for services in East Jerusalem.
4) Israeli heads of departments that supply each of the services listed above.
5) Mayor's advisor on Community Affairs (Minhalot, neighbourhood committees)

Basically we will be concerned with finding out about the lines of communication that have been established between the two groups, in what areas there have been a measure of success
and where there have been failures. We will also be eliciting views on alternative mechanisms to improve information gathering and decision-making with regard to municipal service delivery.

3. Interview Ahmed Salman, 4/6/96, Director of Amona in East Jerusalem, Municipal Department of Taxation

How does the system work?

The central government collects income tax and vacant land tax. Municipalities levy the amone, a tax on built-up properties. All the land of Jerusalem has been divided into 4 taxation zones, ranging from the highest quality zone (1) to the lowest (4). Buildings have also been assigned a grade ranging from 1 to 4. The tax rate per square meter is noted on a table that combines the zone grade with the building grade.

The Department of Taxation prepares the zoning map and its assessors assign a grade to each building. Every citizen gets a bill in the mail. Arab citizens get as well an explanatory brochure in Arabic describing how they can get a reduction in their bill based on the number of people in the family and their monthly income. Arab clerks determine whether a discount is justified and what size it should be.

Problems related to zoning:

The taxation zones were designated in 1967 and have not been changed since, although some of the neighbourhoods have changed considerably, particularly the Jewish neighbourhoods where a great deal of upgrading has taken place. What was considered a No. 1 zone in East Jerusalem that hasn’t changed since 1967 is no longer comparable to a No. 1 zone in West Jerusalem where upgrading has taken place and yet the tax rate remains the same through all the No. 1 zones.

There are many Arab neighbourhoods that still do not have basic services such as sewage, garbage collection and street lights. There are no Jewish neighbourhoods that lack these basic services, and yet the 4 taxation zones apply in both the Jewish and the Arab sector.

Until 1964 it was possible for the City Council to correct this inequality among the neighbourhoods included in each zone by voting for an across the board reduction of 30 to 50% in a specific neighbourhood. A national law passed in 1964 forbids across-the-board reductions for specific neighbourhoods.

There is only one commercial zone with a single tax rate and it applies to every commercial property in the city, from the shops in the Mall to the local comer grocery. Commercial property owners in both East and West Jerusalem feel bitter about this inequity.

Until 1994 tax rates were based on number of rooms; the new law mandates that tax rates be based on square meters. Rooms in Arab homes are larger than those in standard Jewish apartments and so the tax bills in East Jerusalem have greatly increased in the last few tax years.
Problems of collection:

About 65% of the taxes in East Jerusalem are in fact collected. There are some
neighbourhoods where tax collection is only 50%. Not clear how non-payment is punished. The
Municipality has the right to cut off water supply and to confiscate personal property. The
decision about which punishment applies used to be made by personal decision of the previous
head of the department in on-site visits. Mr. Salman now makes these decisions.

The working of the system

1) Mr. Salman intervenes on a personal level in cases of extreme hardship, by bringing
such matters to the attention of his superior who usually grants some form of clemency. We must
assume that Arab citizens appeal to Mr. Salman with regard to punishments for non-payment.
This system provides a vent for easing difficulties without forcing the system to make any basic
changes. It is possible that putting an Arab citizen in charge of protection, keeps the system from
blowing up.

2) Mr. Salman can advise all builders by word of mouth to limit new construction to under
120 sq. meters. There is a huge increase in tax rates for buildings over 120 sq./meters.

3) Changes in the system can be made only through political pressure, either in the City
Council, where no Arabs sit, or in government ministries. For instance, the Association of East
Jerusalem Hotel Owners, as an organised body that knows how the government works and who
has power, turned to the Ministry of Tourism and was able to obtain tax reductions of up to 60%.

4) The Committee Against Amona was formed by a group of Arab citizens who
demonstrated against the inequities in the tax rates, hired a first-rate Jewish lawyer, carried out
negotiations with departmental staff but did not use the political system. When all else failed they
turned to the Supreme Court where they lost their case. The loss caused such disappointment
that the committee disappeared from the arena. (This has also been the case where Arab
organisations have turned directly to the Supreme Court without first trying to tackle the political
system, lost their cases, and disappeared from the scene. For example: Har Homa.)

5) Mr. Salman suggests that the East Jerusalem Chamber of Commerce should be the
body that intervenes in making adjustment in the taxation system in east Jerusalem, but they
have not done so although they are recognised representatives of the Arab population.

4. Aaron Sarig, served the Arab population as Director of the Arab educational system and
advisor to the mayor on Arab affairs, 5/5/96

Administration of services in East Jerusalem has built-in contradiction. On the one hand a
policy to keep Arab population to a minimum, on the other, to provide equal services or at least
reduce some of the gap in physical services. Can't go together.
In the early years of the conquest there were some genuine efforts to achieve cooperation: all school principals asked to retain their jobs which they did, asking the Jordanian director of education to remain in his post which he refused to do, switching the curriculum from the Israeli Arab curriculum to the Jordanian (tawjihi) curriculum.

In addition, Benvenisti made every effort to build housing for Arabs (ala Nesselbech) and schools and turned to the government for funds and authority. In fear that Benvenisti was preparing the way for a separate Arab city his requests were turned down by the Likud government. Sarig himself concentrated on getting government money for the improvement of the Shoafat refugee camp, arguing that Israel cannot continue to criticise Arab governments for maintaining refugee camps when it itself continues to do so. Signed agreements for the transfer of government money to the municipality for this purpose were negotiated but the money was never transferred.

The Government transfers funds to the Municipality (on basis of population, projects, matching funds?) and does not specify whether the funds are to be used for East or West Jerusalem. The Municipality chooses to use these funds almost entirely in Jewish Jerusalem. The Municipality (which body?) in its guidelines to the departments specifies that 25% of the yearly budget should be earmarked for the Arab population. However, this is never done.

Sarig believes that a conclusive agreement between Israel and the Palestinians will reduce the uncertainty about the future of the city and will enable municipal and government officials to relax, knowing that the city could never be divided. The ‘war’ over the division of the city will be over and the need to continuously find ways of preventing that division will also be over.

Any system that reduces fear and anxiety will result in improved services for the Arab population. A powerful excuse for non-delivery of services is the fear of entering the neighbourhoods of East Jerusalem and no one can force a city official to go there is only to check out disruptions and deviations which city officials do regularly in the Jewish neighbourhoods. The Minhalot might be a useful tool inasmuch as they have no power and the municipality doesn’t much care whether Arabs or Jews maintain neighbourhood parks and function as a municipality in other non-crucial service delivery. He believes that the only way to get a fair division of budget is if Arabs sit on the City Council. Rita Ladiansky, Assistant to the Director of the Department of Taxation, 5.6.95

The most effective punishment for non-payment of taxes is stopping the water supply. This is used only when the non-payer has a large debt with the Water Supply department. Stopping the water leads to instant payment. Court cases take too much time. (In fact I have never seen a docket that contained a case of non-payment of armona). Salman reviews the lists of people to be punished and must approve them. (Salman, as well as other Arab officials are thus made partners in the process.) Arabs are also used to deliver the armona bills and notices of punishment to the houses. Arabs also receive the citizens and grant the reductions. A fully staffed taxation department is ready for the Palestinian take-over.
Rita agrees that the taxation zones are inequitable but the only way they can be changed is by request from the City Council to the Ministry of the Interior. Members of the City Council have never initiated a change in the zoning and any changes that have taken place were initiated by the Department. The Department is not about to ask for a change in the zoning of the East Jerusalem neighbourhoods.

Rita reports that there was a surge in payment from East Jerusalemites. The Department believes that Orient House sent word to East Jerusalemites to pay their bills because the Palestinian Authority wants to start with a clean slate when it takes over tax collection in East Jerusalem.

Planning and building

Following immediately after the 1967 War, the Government of Israel redrew the municipal boundaries of Jerusalem to include Jordanian Jerusalem and land adjacent to it on the West Bank. This is the area which came to be known as East Jerusalem. It contains 70,500 dunam, owned almost exclusively by Palestinians, which were annexed to Jerusalem. Since then, the government has been systematically confining the Arab population to ever smaller areas which they own in East Jerusalem so that today only 7,000 dunam, or 10% of the land, may be used by its Palestinian owners.

Two procedures are used to reduce the size of the land area available for use by Arabs: expropriation, which is initiated and implemented by the national government, and city planning which is initiated and implemented by the municipality.

The City Engineer's Office is responsible for all aspects of city planning: preparing town planning schemes for the Arab neighbourhoods, expropriating land for municipal services, supplying planning information to citizens, issuing building licenses, demolishing illegally built homes, collecting license fees, infrastructure levies and betterment tax. In fulfilling each of these mandated functions, department officials must, should or can (depending on the function) come in contact with Palestinian citizens. And yet, the Department has developed devices that enable it to keep contact to a minimum. A special staff of lower-echelon Arab workers maintains all contact with the Arab population, no Arab participates in policy-making, no Arab occupies even a middle-level post, although many of them are highly qualified.

There had been a time (1977-1980) when the municipality decided to establish a planning staff of professional Jews and Arabs with responsibility for maintaining contact with the Arab population, preparing town planning schemes and making the system sufficiently flexible to permit construction that meets the needs of the populace, including planning policy deliberations. It became quickly apparent that the Mayor's staff was unwilling to accept policy for the Arab neighbourhoods that was put forward by the special planning staff. The staff was disbanded when several of its members resigned in protest.

Today, private Jewish city planners are hired by the municipality to prepare Arab neighbourhood town planning schemes. Ordinarily, preparing a neighbourhood town planning
scheme requires preliminary research into the life style, conditions and needs of the population and involves ongoing field visits and discussions with community leaders. These activities are not required for preparing Arab neighbourhood town planning schemes. These schemes are not meant to fulfill the needs of the population but rather to confine growth to a predetermined land area. The purpose of the confinement is to ensure that the existing demographic balance between Arabs (28% of the population) and Jews (72%) will remain constant. A housing quota for the Arab neighbourhoods has been established and each of the Arab neighbourhoods has been assigned its share of the quota. The plan must allocate enough land to achieve the quota and designate the rest of the land for uses that will prevent growth beyond the limits of the quota.

Only private Israeli architects are hired to prepare Arab neighbourhood town planning schemes. No Arab architect has ever been hired to prepare a scheme. Although citizen participation in planning is a cornerstone of municipal planning policy in West Jerusalem, citizens of East Jerusalem do not participate in any way in the planning process. (Recently, and for the first time, a Palestinian architect was hired to prepare an Arab neighbourhood scheme. His plan provides space for a larger number of housing units than the quota allows for that neighbourhood.

The Municipality is considering voiding the plan and beginning the planning process all over again with a non-Arab planner. In another unusual development, a steering committee of Arab professionals was established to help guide the work of the Israeli planners of the Arab Central Business District. It would perhaps be revelatory to check with these professionals to find out to what extent they have been able to influence the plan.)

The lower echelon Arab staff members implement the plan. They give information to landowners on what the plan allows them to do with their land. Since the plans offer few opportunities for development it is the Arab staff member who must convey the ‘bad news’ to the people. Israeli staff members who actually supervise the preparation of these plans rarely if ever get to see the effect these plans have on the populace.

Since the plans offer few opportunities for Arabs to build on their land, few building licenses are issued to Arabs in Jerusalem (about 150 each year to Arabs, about 3,000 to Jews). Overcrowding is a serious problem in all the neighbourhoods of East Jerusalem and families living in substandard housing conditions often have no choice but to build without a license. Illegal homes built on land where building has been prohibited by a town planning scheme undermine the municipal planning policy of confinement. These homes are, therefore, demolished. The municipality has built a team of Arab building inspectors who tour East Jerusalem regularly and serve the owners of illegally built homes with demolition orders.

The Arab community has not openly or actively protested against demolition. One of the reasons is that every illegal builder hopes that the ‘angel of death’ will pass over his house if only he doesn’t draw attention to himself. And in fact there is a large quantity of illegal construction and only a few demolitions by comparison. For instance, in a recent investigation of only one section of one neighbourhood there were 44 buildings constructed on land where building is not permitted and only 2 demolition orders that are now being argued in the courts.
The Town Planning and Building Law (1965) specifies that the Municipal Council must approve schemes and demolitions. There is only one political party in the Jerusalem Council (Meretz) that argues against and votes against the East Jerusalem planning schemes and the demolition lists. Meretz is an Israeli Zionist party. It has only 4 representatives in a Council that numbers 31 members and its minority vote cannot affect any change in existing policy.

5. Education department, director Nissim Solomon, August 4, 1996

There are 3 reasons why the Arab educational system is not on a par with the Jewish system: 1) The population is not yet a consumer of educational services as is the Jewish population; 2) The difficult physical conditions in the system; 3) Low-level educational staff.

Until all three conditions have been solved the Jerusalem municipality can do nothing to equalise services. First everyone must be brought to the same level.

1) The Palestinians are non-consumers.

Palestinian society is undergoing a transition from a traditional to a modern society and they still have a long way to go. They still accept their condition without raising a protest. They still are not organised to fight together for better education. Solomon has never once received a call from a local group or an individual to make demands for change. In the Jewish sector people go to the highest authority to make demands. (If the school bus strays once from its predetermined route and a child is not picked up, the parents call directly to Solomon to protest.) They don't even call Abu Toma. The Palestinian leadership is not fighting for them for better educational services. (Example: story of Issawiye graduating class where Husseini used the incident for political purposes and eventually did not come to the mosque for a party for the graduates.) The actions of the population and its leadership are not those of people seeking autonomous control of their own educational system.

2) Out-of-date and insufficient physical plant.

Budget for constructing new schools in East Jerusalem is not included in the ordinary budget of the government. Schools in East Jerusalem are budgeted only through special agreement with the Minister of the Treasury. Special funds for the construction of 180 classrooms in East Jerusalem were allocated by Minister Schochat on joint appeal by the Minister of Education Rubenstein and the Mayor of Jerusalem Ohlmer. The construction of 100 of these classrooms has already begun. The justification for non-inclusion of East Jerusalem schools in the regular school budgeting process is that the Palestinians are non-participants in the political process. Solomon believes that until the gap in physical facilities is overcome there is no way in which educational services can be equalised.
3) Poorly trained and irresponsible staff.

Educational methods in use in East Jerusalem schools are not acceptable to Manh'î. For instance, it is common practice for principals to hit children. Parents do not object. In all Jerusalem schools the school psychologist is responsible for determining the training program for individual children with achievement problems. Manh'î raised funds for hiring 2 more Arab school psychologist (there are now 4) but couldn't find trained people to fill the posts. Solomon accuses the school principals in East Jerusalem of fiscal irresponsibility. Some private schools were accepted as part of the municipal system when they signed statements declaring that they had asked to be accepted as part of the system—that is, they were not coerced into becoming part of the system against their will. These schools were given a large (?) lump sum of money each year by the central government. There was no demand made for fiscal accountability and no one knows whether in fact the schools used the money for the improvement of the educational program. Mr. Solomon believes that the schools cannot be trusted to manage their money but gave no examples of specific cases of lack of fiscal responsibility. (Why did the central government give out these sums without demanding accountability?)

Would Arab education in East Jerusalem benefit from having its own Department of Arab education, as do the Ultra-Orthodox today? The Ultra-Orthodox Arab Education Department has become a political playing field where each group within the ultra-Orthodox community plays for a larger share of the take than the other groups. There is no concern for educational policy, or programming and the educational system is not only not improved but actually suffers.
MANAGING CONFLICT IN JERUSALEM

Michael Romann (IPCRI)

Introduction: ‘The Jerusalem problem’

The “Jerusalem problem” is, no doubt, the most controversial and difficult issue regarding any future settlement of the Israeli-Palestinian conflict. The Holy City is not only the symbol of conflicting religious beliefs, historic attachment and national aspirations, but it has also been the major urban concentration of Jews and Arabs in the country, the focus of political struggle and repeated acts of violence ever since the early 1920’s. No wonder, that over the years, several dozens of different plans have been proposed, designed to meet the conflicting claims of the two parties to the city. What the various proposals had in common was a legal, political approach and an effort to elaborate a fair, balanced, often rather sophisticated formula as a solution. Nevertheless, all such plans equally shared the fate of being rejected by one or the two opponents, testifying once again to the extremely complicated nature of the conflict over Jerusalem and the shortcomings of the “blue print” approach.

An alternative, or rather complementary, approach to the Jerusalem question and how it might be handled suggests an essentially behavioural perspective. It examines the actual policies and patterns of conduct that the opposing parties adopted in order to permit some kind of daily co-existence in terms of ongoing conflict during thirty years of Israeli rule over Jerusalem. To be sure, observed behavioural patterns obviously reflected the basically conflicting political goals and strategies and the largely asymmetric power relations on the one hand, as well as the great cultural and social distance between the two ethnic groups on the other. But at the same time, conducting daily, mostly functional, interactions also entailed various dilemmas and compromises, as implied by the need to accommodate practical considerations with political positions. In fact, it can be argued that the very nature of these compromises - or their absence - might testify to what the conflict is about, help classify the different controversial issues in this respect, as well as the kind of practical arrangements reached at so far. It is further suggested that such an analysis might also point, eventually, to the kind of principles and variables that could help accommodate Jewish-Arab co-existence in Jerusalem in the future.

1. Political positions and strategies

The fundamentally opposing political positions of the conflicting parties towards the Jerusalem issue ever since the Six Day War can be summarised as follows. With regard to Israel, it explicitly formulated right from the outset a number of overall, inter-linked, objectives. First, to secure the city’s unity under Israeli rule and Jewish hegemony. Second, to fully integrate East Jerusalem and its Arab population into the Israeli system according to the same model that has been applied regarding the pre-
1967 Arab minority in Israel. And third, to create a different, distinguished, reality in the Arab sector of East Jerusalem compared to that of the West Bank, maintained under military rule. To attain these goals, and by virtue of its position of power, Israel proceeded by a strategy of 'creating facts' - legal, territorial, demographic, and economic. Thus, immediately following the Six Day War it unilaterally extended its laws, jurisdiction and administration over East Jerusalem, regarding both the state and municipal levels. In the three decades that followed, the Israeli authorities persistently acted to enforce the position of the Jewish majority in the city as a whole and its presence in East Jerusalem in particular. The main policy measures to this effect were massive Jewish settlement projects and highly selective allocations of public resources.

The diametrically opposed Arab position was essentially based on denying the very legitimacy of Israeli rule over East Jerusalem, which was considered to be an occupied territory as a result of war. Yet, the strategies available to the Arab minority were by far more limited or effective. These mostly consisted of acts of non-recognition and noncooperation with the Israeli authorities, coupled with efforts to preserve Arab own pre-1967 institutions and separate sectoral assets and other features of self-identity. In this vain, the Palestinian Jerusalemites generally refused to take part in local politics, to appeal to Israeli courts, or to merge their professional associations with their Jewish counterparts, because all these would imply recognising Israeli rule.

Thus, it can be observed that for both parties, political positions and principles were closely associated with institutional measures and patterns of daily conduct. Indeed, in a situation of mutual non-recognition in the, political sense, this was often expressed in practical terms by a kind of 'dialogue through action'.

2. Practical relations and daily conduct

Under such circumstances, coping with conflict also meant that political principles had to be ignored sometimes or circumvented to allow all sorts of practical compromises to be worked out. At the same time, following such practical policies also involved some basic questions, which differed in kind regarding the two parties, as did the kind of compromises adopted by each side and over time. For the Israeli side, the basic question was how to impose its authority or legal structure on a politically hostile and culturally different Arab population. For the Palestinians, the main problem was: to what extent co-operation with the Israeli authorities and the Jewish sector, out of daily needs or economic motives, is justified under occupation, or should be considered as politically condemned collaboration.

Two concrete examples illustrate some of the relevant points raised as instructive case studies. These concern Israeli policies and Palestinian reactions related to the personal and religious status of East Jerusalem Arabs. As we shall see, beyond the legal aspects involved, the treatment of these issues also demonstrates the kind of real dilemmas, apparent paradoxes and overall dialectics related to sharing Jerusalem, and what it implies in the context of the political struggle.
2.1. The status of ‘Jerusalem Residents’

With the application of the Israeli law, jurisdiction and administration to East Jerusalem in June 1967, the Arab population comprised within the boundaries of annexation received the status of ‘Jerusalem Residents’. This corresponded to the personal, legal, status of ‘Israeli Residents’; East Jerusalemites have been granted Israeli identity cards and have become subject to various rights and implied obligations. In these respects, the personal status of Arab ‘Jerusalem Residents’ differed from two other categories of Palestinians under Israeli rule. The first being the ‘Israeli Arab Citizens’, who lived within the pre-1967 borders of Israel since 1948; a limited number of them also reside in Jerusalem. The second and more significant category refers to most other Palestinians from the Occupied Territories, including those living in the West Bank periphery of Jerusalem, who remained subject to Israeli military rule and administration.

From the Israeli perspective, the personal status accorded to the Arab population corresponded with its overall objectives regarding Jerusalem. An acceptable unification of the city under Israeli rule implied that the annexation of the territory of East Jerusalem will be associated with granting its Palestinian residents the status of Israelis. At the same time, in order to secure a substantial Jewish demographic majority, the boundaries of annexation were designed to include maximum territory along with a minimum possible Arab population. Thus were excluded a number of peripheral neighbourhoods which were in fact integral suburbs of East Jerusalem. From the perspective of the Arab inhabitants, although the status of Israeli residency had been imposed upon them unwillingly, it turned out to be associated with considerable economic advantages and consequently became highly valued. In particular, unlike Palestinians from the Occupied Territories in general, as Jerusalem - Israeli residents they were entitled to free access to the Israeli labour market and no less important, to Israeli social security benefits. The status of ‘Jerusalem Residents’ also entitled East Jerusalemites to take part in choosing the municipal council. However, considering the political implication, the Arab community refused to present its own candidates and only relatively few participated in the periodical local elections.

Since the status of ‘Jerusalem Residents’ was given only to those residing within the boundaries of annexation on the morning of June 1967 and to their direct descendants, the question arose as to the right to acquire this status or keep it in cases of change of residence across the city limits and Israeli jurisdiction.

It should be recalled that in various respects the Arab sector of the Jerusalem region extended far beyond the arbitrarily drawn municipal boundaries and that during many years freedom of movement between the city and the West Bank was unlimited and widely practised. This entailed, two sorts of long-term population movements: that of incoming workers and migrants, mainly from the Hebron region, and that of local residents moving out of the city to villages in the close periphery becoming urban suburbs. Since 1967, these general trends tended to increase, due to the major
development projects undertaken by Israel that provided, in turn, more employment opportunities for Arab labour from the region. At the same time, accelerated population growth also contributed to the peripheral expansion of residential developments. In this last respect the dividing line between the municipal area under direct Israeli administration and that of the West Bank adjacent areas became highly significant. Within East Jerusalem construction was rather restricted due to a variety of factors, such as unclear registration of property, the lack of proper land-use plans, relatively high taxes and discouraging bureaucratic procedures. By contrast, within the jurisdiction of the West Bank and Arab municipalities, land prices were cheaper, taxes lower and planning standards and the issue of construction permits much more relaxed. However, these trends were also and mainly more directly influenced by Israeli land policies and underlying political motives. A considerable proportion of land reserves, totalling almost one third of the entire area of East Jerusalem, has been expropriated for the construction of several major Jewish settlement projects in this part of the city. In addition, extensive areas have been classified as open space, the preparation of land-use plans in the Arab sector have been much delayed and generally authorised only relatively low building densities compared to Jewish construction standards.

As to the population policies, beside the encouragement of Jewish growth and settlement, these clearly distinguished between the two categories of incoming and out moving Palestinian residents. Thus, in spite of the fact that over the years a considerable number of Arabs took up permanent, de facto, residence in East Jerusalem, they were never entitled to become ‘Israeli Residents’. At most, only a limited number of such cases has been approved in the framework of ‘family reunion’ policy; this being generally restricted to West Bank women engaged to East Jerusalemites. On the other hand, for many years, Jerusalemites who moved to the West Bank periphery of the city kept their ‘Jerusalem status’ as Israeli residents. Thus emerged a particular ever growing category of thousands of East Jerusalemites of a somewhat ambiguous, dual, status: that of ‘Jerusalem-Israeli-residents’ residing beyond the municipal limits and beyond direct Israeli jurisdiction. In this respect, a kind of implicit understanding -or rather convergence of interests- has been reached. Namely: the Arab inhabitants were interested in keeping their Israeli residency status, in view of the economic advantages involved, particularly those related to social security rights. The Israeli authorities, for their part, consented since they were mainly interested in reducing the number of Palestinians physically present within Jerusalem proper. Out migration was thus encouraged, or at least not discouraged, as might have been the case should have such a move been associated with the change of personal status.

Since the early 1990s, with the change of circumstances, so did attitudes and policies related to the ‘Jerusalem status’ of out migrants. Beginning during the ‘Gulf War’ and following repeated acts of violence of Palestinians against Israelis within the ‘Green Line’, a policy of ever more frequent and strict ‘closure’ has been introduced. Palestinians from the Territories were thus hindered from entering Israel proper, including East Jerusalem, unless provided with special permits. Prolonged and
effective closure in fact greatly reduced the presence of Palestinians in Jerusalem. Not only did it affect the number of workers and customers daily visiting the city, but most probably it also substantially reduced the de-facto presence of ‘irregular’ residents from the Territories in the city. Since the mid-1990’s the Israeli authorities further initiated a new step intended to reduce the sheer number of the de-jure Palestinian population of the city by the removal of the status of those registered as ‘Jerusalem Residents’ from ‘migrants’. The official pretext and procedure relied upon the interpretation and enforcement of regulations implied to foreigners acquiring Israeli residency and later leaving the country for longer than a determined period of time. This rule has already been previously applied in several cases to Palestinians who stayed abroad for long time periods and who wished to regain right of entry and legal status. Now, this policy has been applied to those who, although being Jerusalem natives, ‘the city ceased to be the centre of their existence’.

Under such conditions the possession of an Israeli identity card became even more valuable, since not only did it permit a continued daily movement to the central city, but also did it assure continued access to Israel’s employment centres in periods of closure. To conform with Israeli demands, these ‘migrants’ did the utmost to prove their uninterrupted attachment to the city by providing ever more pieces of evidence, such as paying local taxes, registration of children in municipal schools and more. Indeed, many among them have kept for years a Jerusalem address or re-established a foothold within the Israeli jurisdiction. Moreover, with the new menace to their formal status, the issue of being a Jerusalemite has become for the Palestinians not only an existential question but also and mostly -as for the Israelis- a major political and symbolic issue.

2.2. Israeli citizenship

Since 1967, East Jerusalem Palestinians have been offered the option of becoming full Israeli citizens. This required an explicit request and the denouncement of the Jordanian citizenship which they continued to hold also after the change of regime and under Israeli jurisdiction. In practice, for many years only very few adopted this option, preferring as a general rule, to keep to their former national status. In fact, contrary to the status of Israeli residency, Israeli citizenship had mostly a limited value since the possession of an Israeli passport - the main practical advantage - would have a negative impact their on going, relationships with Jordan and the rest of the Arab world. Paradoxically, it is only in recent years, that an increasing number of Palestinians holding Israeli residency applied to acquire Israeli citizenship. The establishment of formal relations between Israel and Jordan and a number of other Arab countries, which now allowed them to travel there with Israeli documents, as well as the unclear future and nature of Palestinian self-rule are some of the presumed reasons for this new phenomenon. Yet, the desire and need to preserve the ‘Jerusalem residency’ status and guarantee an attachment to the city, facing the changing Israeli policies in this regard are certainly additional important motives.
The Israeli authorities, too, were willing to forgo some of their own rules related to the citizenship issue out of practical consideration. This applied, among other things, to the employment of Palestinians in Israeli public services operating in East Jerusalem, ranging from various government agencies to public schools. While the engagement of personnel in such cases normally required the possession of Israeli citizenship, this requirement was not enforced in the context of reunification. Probably the most revealing example to illustrate the kind of compromises undertaken by both sides relates to the engagement of Palestinians in the Israeli police force in Jerusalem. Since they continued to hold the Jordanian citizenship, this meant that citizens of a country which was officially at a state of war with Israel (until the very recent peace treaty) served in the Israeli security forces. Moreover, since the police personnel is considered as an integral part of the Israeli defence forces, they are also entitled, or rather obliged, to carry on their uniform badges testifying to being in active service during the various Israeli-Arab wars. This rule has been also applied to the Palestinian policemen from East Jerusalem in order not to distinguish them, in appearance and authority, from their Jewish counterparts. Thus, we can observe certain veteran Arab policemen who have served in East Jerusalem during the 1982 Lebanon War conducted against the Palestinians, while being themselves citizens of a state officially at war with Israel carrying badges symbolising a war conducted against their own people.

2.3. Religious status of East Jerusalem Moslems

According to Israeli law and practice, personal matters such as marriage, divorce, etc. are entrusted to the respective religious courts and rulings. As in the case of rabbinical courts for Jews, in the case of the Moslem Shari’a courts, Quadies (religious judges) are nominated by the Israeli president, are supervised and provided by the Ministry of Religious Affairs and their rulings are respected and if necessary enforced by the civil authorities. Following 1967, this system has been basically extended to the various Christian denominations in East Jerusalem. However, Israel’s initial intention to apply the same practice to the Moslem community has been categorically rejected for political reasons. In response to the change in regime, a newly created Supreme Muslim Council has been established to supervise all Islamic institutions in East Jerusalem and the Occupied Territories of the West Bank. This new body was not recognised by the Israeli authorities nor did it, in turn, recognise them. Nominations supervision, and financing has been provided by Jordan (and later, in part, by the Palestinians authority) and legal procedures greatly differed from those exercised in Israel. Thus, Israel failed to impose its own rules in this respect, but at the same time this also implied that Islamic court rulings concerning the personal status of East-Jerusalem Arabs were not respected by the Israeli authorities. One crucial issue related to the necessary registration of marriages and children in official documents which bore, in turn, upon the provision of Israeli identity cards, the right to reside in Jerusalem and receive social security benefits.
Under these circumstances, both parties implicitly agreed upon a procedure designed to circumvent this state of mutual non-recognition. It consisted of the following practice: rulings of the East-Jerusalem Shari’a courts are transmitted to an Israeli based parallel institution for ratification, and this, in turn, is legally recognised and accepted by the Israeli authorities for all aims and purposes. In fact, whereas at first the Israeli Shari’a court applied to was located in the city of Jaffa, at a second stage, to serve the same purpose more efficiently, a new Shari’a court was established in the Jewish sector of West-Jerusalem, just across the ethnic dividing line.

2.4. The status of the Holy Places

While religious autonomy in matters pertaining to personal practice and status are traditionally a generally accepted principle, the rights to and the status of the holy places in Jerusalem has for long been a far more sensitive and controversial issue, since it involves the control of symbolic and physical space, often overlapping or mutually claimed by Arabs and Jews.

From an historic perspective, ever since the second half of the 19th century, two general rules have been adopted and mostly referred to. The first related to the freedom of access and worship as well as the right to a certain autonomy regarding the maintenance of the respective holy places. The second referred to the principle of ‘Status Quo’ in connection with these various rights, where different religions shared or contested the same sites. These rules have been essentially respected under the various regimes regarding the Christian holy places, where the major problems concerned the competing claims of the different denominations among themselves and where no Jewish, Moslem or state interests were directly involved. The more problematic issue concerned those historic and religious sites venerated by both Judaism and Islam. This was mainly the case of the Wailing Wall where access of Jews has been largely restricted even under the British Mandate and completely denied during the Jordanian rule of East Jerusalem. This was more fundamentally the case of the historic compound of the Temple Mount where Jews were not allowed to penetrate ever since its destruction and which has been occupied since the 7th century by the great mosques of Jerusalem (the Haram al Sharif).

Since 1967 Israel faced the sensitive, unprecedented, position of controlling the major holy places to Christianity and Islam and at the same time the power to permit Jews’ access to their own most venerated sites which until then had been forbidden. It is in this context that right after the end of hostilities, Israel officially declared its intention to respect the traditional principles of freedom of access and “Status Quo”, and generally followed a policy of non intervention in the management of various Christian and Moslem holy sites. At the same time, by virtue of its position of power Israeli initiated a series of unilateral steps intended to concretise Jews’ return to and presence in the Holy City. This particularly concerned the Wailing Wall, where large sections in the vicinity - for the most part Moslem Waqf property - have been expropriated for the use of Jewish worshipers, archeological excavations and tourist developments, in spite of repeated and vigorous protests of the Islamic institutions.
A no less symbolic development was the permission granted to Jews to visit the historic site of Temple Mount, including the Dome of the Rock and the al-Aqsa Mosque, on a regular basis. While such a radical change of status certainly reflected Israel's capability to impose its new authority, nevertheless, in this particular case it solicited and received the tacit agreement of the Islamic authorities to the new arrangements.

A combination of religious and practical considerations were involved in shaping various arrangements concerning this most sensitive site. For example, the consent of the Islamic authorities to permit non Moslem tourist visits has been largely encouraged by the needed receipts of entrance fees as a major source of income. The Israeli authorities, for their part, strictly prohibited Jewish prayer within the entire area of the great mosques, but this, in turn, was facilitated by a rabbinical decree preventing the penetration of religious Jews to this ancient site of the Temple Mount for purely theological reasons (unlike the case of the Tomb of the Patriarchs in Hebron where the involuntary sharing of this common holly site has caused constant friction and acts of violence). Nevertheless, the kind of security measures needed, became a major yet delicate issue. One example of the practical arrangements reached relates to the control of the many entrance gates to the compound. In several gates it was conducted by joint guards consisting of Israeli policemen (mostly East Jerusalem Palestinian conscripts) and local employees of the Moslem Waqf, the Moslem authorities being in charge of all but one gates. In the gate overlooking the Wailing Wall, the ultimate responsibility and security remained in the hands of the Israeli military.

Indeed, questions of symbolic, legal and concrete authority and control were often inter related. This concerned numerous issues ranging from the determination of visiting hours or the licensing of new construction to the content of Friday preaching. Generally speaking, the various measures related to the status of this holy site have been subject to constant, ongoing confrontations and negotiations, unilateral acts and different kinds of compromises. The specific cases or outcomes, in turn, varied and reflected either one sided imposition or some sort of implicit understanding or explicit agreements.

3. Dimensions of conflict and compromise

A broader, comparative, examination of the policies adopted by the two sides in regard to the specific issues of personal and religious status and their implications might testify to the more general nature of the Jewish - Arab conflict over Jerusalem. It should tell us what are the main issues of the conflict and to what extent these can be differentiated or ranked in importance; and also: where, why, and what kind of compromise could be reached to allow some sort of co-existence in terms of conflict. In all these respects, comparing the political positions with the actual patterns of conduct towards the different issues involved in the conflict, and comparing, in turn, the attitudes of the antagonising parties in this respects should provide useful indications and certain generalisations.
3.1. The asymmetric dimensions of compromise

While it is evident that both parties were obliged to give up some of their more fundamental, original, political objectives out of realistic considerations, certain asymmetries need to be noticed. These reflected the extremely uneven power relations, in political as well as demographic and economic terms, between the Jewish majority and the Palestinian subordinated minority.

Israel had to forgo some expressions of sovereignty over East Jerusalem and its Palestinian inhabitants. As we have seen, on many occasions the Israeli authorities refrained from imposing the formal laws and administrative systems on the Arab sector and reluctantly allowed the existence of different standards compared to those practised in the Jewish sector and even regarding the Israeli Arabs. Yet, this sort of compromising attitude mainly concerned Arab cultural norms and autonomous affairs, such as in matters related to the religious status or various similar matters. This was also the case, to cite yet another example, when Israel tried to introduce in East Jerusalem public schools an ‘Israeli - Arab’ curriculum, according to the common practice in Israel proper. Facing Palestinian opposition it gave up its initial plan and consented that even in schools supervised by the Jerusalem municipality and the Israeli Ministry of Education, the teaching program remained similar to that in the West Bank, and in fact to that followed in Jordan (and later under the Palestinian authority). This was more generally the case with state laws and municipal decrees related to the use of language or even to certain norms of economic conduct. It is in such a context that the mandatory introduction of Hebrew in shop signs, the respect of Israeli, Jewish closing days, the display of fixed prices, and various other municipal regulations, have been never imposed in Arab East Jerusalem. By contrast, as a general rule, Israel was uncompromising regarding all matters directly or indirectly related to the struggle for actual control over the city. As its policy concerning the personal status of East Jerusalemites reveals, this was all along associated with Israel’s principle objective of consolidating the Jewish demographic majority within the defined territory of Jerusalem’s jurisdiction.

The Palestinians, for their part, were not in a position to strictly follow all that was implied by the strategy of ‘noncooperation’, as an expression of ‘nonrecognition’ of Israeli and Jewish rule. Due to their minority and dependency status, compromises were more directly related to daily, mostly economic, needs; and this was politically justified by the formula of ‘steadfastness’ - that is, the need to hold out under occupation. Accordingly, acquiring an Israeli identity card was justified, as was receiving Israeli social security funds which this status guaranteed; and so was working in the Jewish sector, even in the Israeli police. However, drawing the line between economically justified co-operation and politically condemned collaboration was not simple and remained subject to somewhat flexible and changing rules. Thus, presenting candidates in municipal elections was totally unacceptable; occasional, limited participation in the election of a Jewish mayor was somewhat tolerated, whereas being employed by the municipality was generally accepted and pursued. In a
similar fashion, the sale of Arab land to Jews was highly sanctioned while the
construction of Jewish settlements by Arab labour on expropriated land was widely
practised as one of the main sources of employment and income. During the Intifada
- the Palestinian uprising which began towards the end of 1987 - there were attempts
to change these rules when the policy of 'steadfastness' was replaced by that of
'disengagement'. It called for the resignation of Arab policemen, municipal
employees, and other workers in the Jewish sector, as well as the boycott of Israeli
products and more. These attempts were short-lived, as economic reality again
imposed compromising practices somewhat different from political principles.

3.2. The symmetrical dimensions of conflict

When considering the same empirical evidence from a different angle, namely:
where manifested political positions and strategies coincided with actual behaviour,
this should indicate to what the basic issues of the conflict are about. This is
particularly true where positions and practices of the two sides were rather
symmetrical.

Evidently, for both sides the most crucial and contentious issue was the question
of control, in terms of sovereignty and territory. Israel openly and repeatedly
proclaimed its right to keep East Jerusalem under exclusive rule, in the same way that
it was determined to create maximum facts on the ground to this effect. As we have
seen, in order to extend a Jewish physical presence in that part of the city and secure a
demographic majority in the city as a whole, the Israeli authorities employed a host of
means, including the manipulation of municipal boundaries, the expropriation of Arab
land, selective planning methods and discriminating population policies. The Arab
side likewise firmly maintained its position of refusal to recognise Israeli rule over the
Eastern part of the city. In concrete terms, this was expressed by denying all
proposals to join any Israeli political framework, including at the municipal level. It
should be recalled, that by virtue of their status as 'Jerusalem Residents' the Arab
inhabitants - who represented almost thirty percent of the entire population - could
gain considerable material advantages by joining the system. Moreover, unlike the
case of Israeli Arabs within pre-1967 Israel, East Jerusalem Arabs even refrained from
explicitly claiming a greater, more equal, share in resources allocation, since this
might have implied recognising Israeli rule. The primordial importance attributed to
territory is more particularly expressed by the very term and selective attitudes to the
principle of 'steadfastness'. Thus, while being engaged in all sorts of economic
exchange with the Jewish sector was widely practised, the Arab population refused to
claim any compensations for expropriated land - even that abandoned in West
Jerusalem in 1948 - and vigorously opposed any land transactions with Jews.

In the same way, it can be argued that the Jerusalem conflict is not about
religion nor about personal identity. Jews and Arabs adhere to well defined and
distinguished ethnic identities, mixed identities never exist, and neither side wishes to
convert the other or gain any religious or national ground in such a manner. The two
communities alike agree, on principle, to conduct different and separate life styles,
socially, culturally and religiously. In practical terms, as we have seen, it is precisely in this context that the Israeli authorities were most willing not to impose Jewish legal majority norms on the Arab minority. This is further manifested by a wide spread, mostly voluntary, segregation of residential areas and activity centres and separate institutional frameworks, permitting separate community services and different norms of conducting daily activities, like the language used and the like. Of course, the religious aspect of the dispute is all too evident, but this must be essentially related to the symbolic and territorial dimension of the struggle for controlling the Holy City.

In regard to various other issues involved in the Jerusalem conflict, such as the collective and personal status and rights of Jews and Arabs, or the socio-economic gaps between the two communities and their differential access to public resources, these should be considered as essentially secondary issues. In fact, these should be evaluated against the particular context relating them to either the struggle for control or to that of the ethnic-cultural divide.

3.3. Between dimensions of conflict and compromise

Israel refused to accord the Arab population of East Jerusalem the right to self determination or any sort of a collective political status within its own political system or in relation to a Palestinian entity in the West Bank, since that would contradict Israeli claim for sovereignty. At the same time, Israel accepted, although reluctantly, the continued activity of the pre-1967 public functions which had operated in East Jerusalem, recognising and respecting Arab specific needs and traditional autonomous structure. This was the case of the Moslem Supreme Council and numerous other professional and similar bodies which assumed additional functions under Israeli rule as Palestinian ‘National Institutions’. This kind of dual, compromising, practice was also true, as we have seen, in regard to the issue of personal status. The personal status and related identity markers and rights differed in various respects for Arabs and Jews for a combination of reasons. On the one hand this was imposed by the Israeli authorities as a tool in the struggle for control in a conflicting environment, where demography and ethnic identity played a crucial role. On the other hand, here again, this reflected Israeli consent to Palestinian insistence on preserving their own different norms - in matters such as religious marriage or education - and claims for self definition.

However, policies concerning the collective and personal status and rights have been often interrelated or rather intermixed, as was the case with the issue of municipal residency rights being applied differently according to national affiliation of Arab and Jews. This was also true in regard to the question of different ethnic norms versus equal rights, which was clearly involved in the selective allocation of public resources. The fact that Israel allowed the Arab sector to keep to its own institutions and cultural norms often served the authorities as a pretext for discrimination. The argument went as follows: since the Palestinians insist on not integrating into the Israeli system - as we have seen in the case of education and religious services, for example - they should provide for their own needs. A similar kind of reasoning was
sometimes applied to restricting housing density in Arab inhabited areas compared to substantially higher density authorised in Jewish developments, and this in the name of planning standards respecting Arab 'village-like' style of land-use. The official or authorised use of Hebrew and Arabic in Jerusalem can serve as another example of how the different norms on the one hand and the uneven power relations on the other hand, have been selectively inter related. The exclusive use of Hebrew even when approaching the Arab sector - as was often the case of many public signs or official documents - obviously implied unequal opportunities by imposing majority norms on the minority. By contrast, the authorised and common practice of Hebrew in the Jewish sector and Arabic in the Arab sector of the city, thus respecting the two cultural norms in a selective fashion, was clearly a more balanced model. However, the mandatory use of both, Hebrew and Arabic throughout the city and in all official documents and public display - the indication of street names in Jerusalem being one rare example - would have permitted the most equal opportunities for the two parties alike; yet this represented the option least employed.

3.4. Ranking dimensions of conflict versus compromise

Considering the multi-dimensional nature of the Jerusalem question, it should be useful to outline some of these, and show how within each one, different components, or aspects, can be located along a continuum stretching between the poles of conflict and compromise. Three general dimensions will be thus considered: first, that of the main issues involved in the conflict; second, that of the various aspects of imposing or gaining control; and, finally, that of the different modes of agreement worked out.

3.4.1. Issues of conflict

While the many issues which are subject to conflict are variously inter-linked, these can, nevertheless, be roughly ranked in importance. Based on the empirical evidence concerning both, the political positions as well as the actual conduct of the two parties, the following descending order is suggested. 1) First and foremost, it should be stressed once again, that the Jerusalem conflict is about political sovereignty and control of territory. It is in these terms that the two conflicting parties claim for themselves full and exclusive political authority over the same area of East Jerusalem. These are also the fundamental issues that Israel and the Palestinians alike repeatedly manifested their explicit objectives and have followed well defined strategies and uncompromising policies within their respective political and economic constraints. 2) At a second place stands the issue of the collective political status of the Palestinian population of East Jerusalem. Here, while diametrically opposing positions prevailed regarding Arab claims, the Israeli authorities, although denying formal recognition, allowed some practical expressions of group autonomy, such as the functioning of various Palestinian institutions located in East Jerusalem and equally operating in the West Bank. 3) The issue of the personal status should be considered as only following in importance. In this case the two sides agreed, in
principle as well as in practice, that the Palestinian population will share the status of Jerusalem residency and even of an Israeli residency and maintain the choice of a different citizenship. At the same time, since all this remained subject to selective population policies it also remained a major contentious issue. 4) The issue of socio-economic differentiation and unequal opportunities which coincides with the Jewish-Arab struggle over the city, and which so often is central in ethnic disputes elsewhere, should be thus relegated to a relatively low position on the current agenda of the Jerusalem conflict. Jews and Arabs alike basically agreed to conduct functional relationships, mostly in the economic sphere, and that in spite of political conflict and social segregation. The Jewish side favoured such instrumental exchanges not only because of their economic advantages but also as an expression of the unification of Jerusalem and the belief that economic opportunities will diminish Arab political frustration. The Arab side, as we have seen, was also economically motivated and chose, as obliged, economic co-operation in spite of political opposition. More significantly, in spite of increasing social gaps and discriminating allocation of resources, the Palestinians were prepared to put aside explicit claims for equality or use any political leverage to this effect, since this might overshadow the more crucial issues. 6) Finally, as already stated the religious-cultural issue should be ranked last if considered on its own merits, as unrelated to the issue of symbolic, territorial control of the Holy Places and what is represented by the spiritual notion of 'Jerusalem'. The distinct self definition of Jews and Arabs as ethnic, national and social entities is mutually recognised and hardly disputed, and so are the different practices of daily religious and social norms.

3.4.2. Aspects of control

While the central issue of conflict is that of the struggle for control, the empirical evidence teaches us that in practical terms there were different kinds and measures of control involved, and these were differently exercised by the two sides in various contexts. Generally speaking, wherever Israel did not fully apply its laws and jurisdiction over the Arab sector this implied, in fact, giving up certain aspects of control. This was the case as we have seen, when Israel relinquished authority to the Moslem Supreme Council, whereas in the case of Arab public education sharing or separating aspects of control meant an Israeli authority over budgets and nominations and a Palestinian competence over the content of school programs.

This was particularly true regarding the issue of territorial control where the Jewish-Arab struggle was not just confined to the abstract question of sovereignty or the source of political power. The ‘battle on the ground’ also and mainly revolved around two additional elements: that of land ownership and that of actual, physical, presence. In the first case, the exercise of power by Israel varied considerably, ranging from massive and one sided expropriation of Arab land to minimum intervention in private ownership rights out of respect of Arab norms, even where this was required according to Israeli planning standards. With regard to Jewish versus Arab presence, the exercise of control further varied in kind and degree. It involved
outright Jewish settlement and restrictive planning of Arab zones, but at the same time it hardly intervened in various other aspects related to the occupation of space in Arab areas, particularly those associated with the commercial and residential environments and ethnic identity markers.

In purely spatial terms as well, territorial control was not exercised to the same extent throughout the Jerusalem area. From the Israeli point of view this was particularly true in two cases. First, as we have seen, a certain measure of autonomy was allowed within defined ‘territorial enclaves’ of the Holy Places, where the authorities refrained from fully imposing even municipal rules related to construction permits. Second, certain peripheral sections of Arab East Jerusalem, such as refugee camps, Bedouin settlements or remote villages areas, although comprised within the municipal limits, were hardly considered as an integral part of the core areas of the city; neither regarding the application of the Israeli law nor in respect to the kind and level of services provided. The Palestinians, too, related to “Jerusalem” (al-Quds) in a differential manner, which did not necessarily coincide with that of the Israelis. Most of them clearly distinguish between West and East Jerusalem, or between the Old City and the pre – 1967 Jordanian municipal area, as against several peripheral villages which have been included in the extended city boundaries annexed by Israel.

By the same token, the distinction between Jerusalem and the Arab and Jewish suburbs which have developed in the nearby periphery of the West Bank was also subject to differential realities and perceptions. Unlike Israelis, the Palestinians never distinguished between Jewish ‘neighbourhoods’ established in East Jerusalem and close by ‘settlements’ of the West Bank; both considered as equally illegal. As to the suburban residents themselves, while the Jerusalem status of ‘migrating’ Arabs has been questioned, as we have seen, Jewish settlers in the West Bank sort of carried with them their Israeli legal status and rights. In greater Jerusalem, both within and beyond the municipal limits, a whole range of territorial entities have been created, variously distinguished as to how these are controlled and perceived or as related to the territorial, legal boundaries and the ethnic origin of their inhabitants.

3.4.3. Terms of agreement

Finally, a number of patterns of compromising arrangements should be outlined and equally ranked. Here again, the observed relationships between proclaimed political positions and practical, compromising conduct might serve as an indicator. Following this approach, the first step toward compromise related to cases where in spite of opposing positions some practical arrangements have been worked out by way of ‘bypassing’ political principles or turning a blind eye to it if necessary. The case of the Shari’a courts in East Jerusalem where the two sides agreed to disagree is a relevant example. By comparison, where practical compromise is the outcome of implicit understanding, such as in the case of the teaching programs in East Jerusalem public schools, this should represent a higher ranking on the scale of compromise. Still better, following the same direction, is the case of certain agreements reached about visiting modes and responsibilities in the compound of the great mosques.
(Temple Mount). In fact, it is precisely in regard to several questions related to the Holy Places, that concrete arrangements have been respected or attained as a result of mutual and explicit agreements.

Conclusion: Policy implications

The analysis and interpretation of the various elements involved in the conflict over Jerusalem might provide some indications as to those more likely to contribute to the advancement of the cause of co-existence. These essentially rely on the various dimensions of conflict versus compromise classified above and can be summarised in the form of a number of basic concepts as follows.

1) Managing conflict rather than the settlement of the conflict. Considering the multitude of implicate aspects of the Jerusalem question, it is doubtful whether a single, all inclusive, formula for resolving the conflict can be elaborated. Not only does such a formula imply providing satisfactory answers to all the controversial issues simultaneously, but first and foremost, it will have to resolve some of the issues where conflicting positions are defined in “zero sum” terms. Chief among them: the issues of sovereignty and territory, both considered by the two parties as non negotiable, due to their symbolic and exclusive nature. Instead, “managing conflict” means working to find partial compromises in spite of and in the framework of the ongoing conflict. It is true that this could mean just ‘muddling through’ by improvising ad-hoc solutions to ever changing manifestations of ethnic friction intended to keep some sort of a low profile co-existence, as long as the fundamental causes of conflict persist. But managing conflict could further mean approaching the treatment of the Jerusalem problem as a process, which by definition will be gradual but will imply a sense of progress and direction.

2) From dimensions of conflict to dimensions of compromise. The gradualist approach implies dealing, first and foremost, with the difference in manifestation of the conflict, both in content and form, by first seeking an understanding where possible. Only at a later stage those dimensions that are more controversial will be looked into, rather than the other way round. In the framework of the dimensions of compromise versus conflict the direction of progress can be thus indicated by ‘climbing up’ along the scale of ranking. The following framework can serve as an example when considering three main dimensions: that of the issues of conflict; that of the aspect of control; and that of the terms or forms of agreement.

a) The issues of conflict: managing conflict implies beginning with reaching agreements on issues related to cultural autonomy, symbols of identity and economic opportunities, which rank lowest on the scale of conflict, as we have seen. The more difficult issues, namely those related to territory, demography and the political status should be deferred to a latter stage.

b) Aspects of control: Managing conflict means that rather than relating to the Jerusalem problem in terms of the abstract notion of “sovereignty” and the absolute
aspect of "territory", it should be defined in the more versatile concept of "control", political as well as practical. With regard to most of the issues a major element of the conflict is: which side maintains control, and what kind and degree of control. Thus, in regard to territorial control, which is at the centre of the conflict, this could be differentiated according to the side which determines ownership rights, maintains general or detailed planning powers, or even has authority over matters such as street names and closing hours. No less important is the fact that the territorial aspect as such could be differentiated according to core areas and peripheral sections of what each side considers as the concrete expression of the symbolic notion of "Jerusalem".

c) Terms of consent. On top of that, managing conflict means striving for more explicit terms of compromise. Thus, where possible, explicit agreements should replace implicit understandings and long-term arrangements with ad-hoc measures. In the same way, cases of manifested opposing positions associated with outright non-co-operation should be replaced by some sort of implicit understanding and practical measures.

3) Separating between dimensions of conflict. Since some fundamental problems relate to the kind of linkage existing between the different issues involved in the conflict, these should be treated in an unrelated fashion if possible. This might apply to the question of personal versus political status, or national citizenship and local residency status. The linkage between ethnic identity, sectoral separation and the allocation of public resources is another case in point where the current practice of 'separate thus unequal' should be replaced by ever more measures of 'separate but equal'. Here again, the distinction between aspects related to territorial and political control, such as the affiliation to the political entities beyond the location of residence, are just some of the options that have been already selectively practised.

4) Giving up control for agreement. Finally, the question may be raised: what is essentially exchanged between the conflicting parties in the process of managing the conflict and why? Because of the nature of the Israeli-Palestinian conflict and the existing uneven power relations, it seems that the following trade-off is implied: the Israeli side will relinquish aspects, or degrees, of control to the Palestinians, while they in return will gradually accept increasing manifestations of consent to future agreements. Indeed, as with the decades long Arab-Jewish conflict over the country as a whole: creating facts and consolidating the existence of Israel was not enough to settle the conflict. What Israel strove for all along was receiving recognition; and that could be granted only by the other side to the conflict.

Notes

1 There exists an abundant documentation and literature regarding the "Jerusalem Question" and its solution. For some works summarising this material, see: Benvenisti, 1985; Lapidoth & Hirsch, 1992; Lapidoth, 1994; Hirsch et al. 1995.
For a detailed description of the process and implications of reunification, see, for example: Benvenisti, 1976. A review and analysis of various aspects of Jewish-Arab daily relationships can be found in: Romann, 1996; Romann & Weingrod, 1991.

References

MANAGING CONFLICT IN JERUSALEM

- The need for de facto modus vivendi arrangements -

Bernard Sabella (IPCRI)

1. Religious status

Jerusalem is sacred to the three monotheistic religions, each from its own history and vantage point. This sacredness seems to transcend temporary or earthly considerations, be they political, administrative and municipal. But sacredness is never abstract as it is translated into holy places and into ceremonious rites and rituals that fill both physical and social space. The followers of the three religions have also their varied religious and civil needs that are usually met by institutions developed by the relevant hierarchies. These institutions, however, especially in terms of civil needs, have to be recognised in order for their decisions to carry the weight of law. This is particularly the case when decisions concerning marriage, its annulment and divorce are to be transmitted to the civil authorities that undertake to carry out these decisions or to make them legal.

But the three religions have also to care for and maintain their holy places. This is important because these places, more so than individual and collective temporal needs, symbolise the essence of the religion and its sacred nature throughout the ages. The sensitivity of the holy places and their impact on political and other relationships in society are an important component of the Arab-Israeli conflict as well as in inter-religious and intra-religious relationships, especially in the city of Jerusalem.

When in 1967 Israel occupied East Jerusalem, the two aspects of religious status: holy places and civil needs of Muslims became a topic of discussion. The Muslim religious authorities came up with a Fatwa - a religious ordinance binding to Muslims - that stipulated the impossibility for non-Muslims to manage the religious affairs of Muslims. Soon afterwards, in July 24, 1967, Al-Hay'ah Al-Islamiyah (The Muslim Council) was founded. There was never a reciprocal formal recognition of either the Muslim Council or the Israeli authorities of each other's competencies with respect to managing the civil affairs of the Muslims of Jerusalem. However, de facto modus vivendi relationships have evolved which allowed The Muslim Council and religious authorities, including Waqf (Community Trusts) and Religious Courts, to manage the civil affairs of Muslims in Jerusalem without interference from Israeli authorities.

The Christian communities, taking the precedent set by the Muslim Council, have also continued to manage the civil affairs of Christians in the city in the respective religious courts of the various churches. Thus the de facto modus vivendi relationships were extended to all religious communities of the city. The right of Muslim and Christian religious courts to look into civil matters of their members was
an accepted practice prior to 1967 in both Israel and Jordan. It continues to be so in both countries and in the Palestinian territories.

Religious court rulings, whether Muslim or Christian, on civil matters need the power of execution. This power rests in Jerusalem with the Israeli authorities. Accordingly, all matters and rulings in order to be legally binding have to be transmitted to the respective Israeli authorities, such as the Ministry of the Interior, the National Insurance Institute, the Ministry of Religious Affairs and the Ministry of Justice. One workable solution in matters of marriage for Muslims is to ask a Sheikh - a Muslim religious person- from within Israel proper such as Jaffa to perform the act of marriage and to issue the marriage certificate. This marriage certificate is acceptable to both the Muslim Council and to the appropriate Israeli ministries and authorities.

Christian churches directly transmit the marriage certificates to the appropriate Israeli authorities. This step does not involve any threat to the religious autonomy and competency in civil matters of the churches. In cases where religious court rulings are not transmitted directly to the appropriate Israeli authority/ies, the plaintiff and/or defendant will individually pass the court ruling, or a copy of it, to the appropriate authority.

Thus the de facto modus vivendi arrangements carry mutual concessions:
1) Israeli authorities accept the autonomy of religious bodies, Muslim Council and Churches, to run their own affairs and court systems pertaining to religious and civil matters.
2) Muslim and Christian bodies accept that their court rulings and matters pertaining to civil status of their members have to be registered, even in roundabout manner, with the appropriate Israeli authority for the sake of legal execution/implementation.
3) No formal channels need to be established or maintained in order to uphold the de facto status quo.

This system of formal mutual non-recognition but de facto modus vivendi arrangements works as long as the two parties chose to informally acknowledge, on the one hand, the right of the religious community to autonomy in religious and civil matters and the need, on the other hand, for the governing authorities to be informed of developments in personal status matters and of religious court rulings.

Autonomy is not perceived as a gracious grant from the Israeli authorities but rather as a right reflecting a religious presence that predates temporal ruling arrangements, as represented by Israeli authorities and their institutions.³ It is this sense of history which combines with the identity of the religious community that makes the autonomy in civil and religious matters so important and hence lends itself to workable arrangements. But as important, religious autonomy in personal status matters does not involve physical space, as do holy places, and hence it remains implicit and as such becomes more manageable on both sides.

With respect to holy places, the principles outlined in the Muslim Fatwa referred to above as well as the system of Status Quo which governs how the Churches operate their holy places. The Christian Status Quo is more explicit on the relationships between the Churches and the temporal powers, be they Ottoman,
British, Jordanian or Israeli. Examples of this Status Quo are the midnight masses of Easter and Christmas where government officials are present in their formal capacities. Also Consuls of Belgium, France, Italy and Spain are present as representatives of Catholic countries. Policemen are stationed at the entrance of the Holy Sepulchre and policemen and other security personnel are present during the major ceremonies on Easter and Christmas. There are also stipulations on the sanctity (sovereignty?) of churches, convents and other holy places which cannot be entered without either an invitation by the religious in charge or a request from the authorities. Infraction of this principle is taken seriously as happened during the Intifada when Israeli policemen and security personnel entered the St. Saviour Convent at New Gate in search for youngsters who apparently were throwing stones at passing Israeli cars.4

The Status Quo refers to firmans issued by the Ottoman government, the most important being that of 1852. This firman dealt with certain holy places and determined the powers and rights of the various denominations in these places. That arrangement became generally known as the status quo and has been applied to the Church of the Holy Sepulchre and its dependencies, the Convent of Deir al-Sultan, the Sanctuary of the Ascension (on the Mount of Olives) the Tomb of the Virgin Mary near Gethsemane in Jerusalem. International recognition is in the Treaty of Paris in 1856 after the Crimean war and 1878 Treaty of Berlin. Principles of status quo extended under British Mandate to include Western (Wailing) Wall and Rachel's Tomb on the road to Bethlehem.5

Tsimhoni sees the development of the status quo as a response of the Ottoman Sultan, Abdul-Mejid, to deter the interference of European powers in the holy places. Accordingly, he issued the famous firman of the status quo, which rejected the possibility of any further demands for changes in the control that the churches held in the holy places. This firman was observed scrupulously until the termination of Ottoman rule in Palestine, and the status quo was then maintained by the successive British, Jordanian and Israeli rules. The privileges and possessions that each community had acquired by the 1850s have remained theirs to this day.6

With respect to Muslim religious places, there are two complications which make the application of the spirit of the Fatwa more difficult than the Christian counterpart of the Status Quo.

First, the modus vivendi relationships which operate in personal status matters also operate in matters related to Muslim holy places in Jerusalem. But these relationships are based on informal expectations and hence there are no agreed upon formal clarifications on the status of holy places as such. True, the Muslim Council and other religious authorities have worked out arrangements with respect to visitations of tourists to the Al-Haram Al-Sharif Complex and the maintenance of the mosques and their management. Apparently, Muslims have an autonomy in running and managing their own places of worship. The presence of policemen and other security personnel on Fridays’ checking outside the different gates of the Complex the identity cards of worshippers is clearly not an agreed upon arrangement.
But this apparent ‘autonomy’ faces challenges especially when the Israeli authorities, be they municipal or ministerial, decide to question this autonomy with respect to holy places. This happened recently when the Muslim Council decided to rehabilitate parts of Solomon's Stables under the Aqsa Mosque. The municipality of Jerusalem issued a restricting order which was tapped on the site prohibiting further construction activity. The issue showed a clear polarisation: on the one hand, the Muslim officials with Sheikh Hassan Tabboub, in charge of Islamic Waqfs in the Palestinian Authority, arguing strongly that the Complex is clearly Muslim territory and that no power or authority has the right to intervene in strictly Muslim affairs. The municipality of Jerusalem, on the other hand, with Ehud Olmert its mayor, arguing that there is one authority in the city which issues building permits of various kinds and that any construction undertaken in the Complex falls under this authority. Olmert, in fact, argued that there can be no two authorities in the city, implying that the issue touches on Israeli sovereignty over the entire city, including holy places.

In response, Deputy Awqaf Minister in the Palestinian National Authority, Sheikh Yousef Salameh, warned Israeli authorities from undertaking any change in the supervision of Muslims over Al-Haram Al-Sharif and its sacred sites saying: ‘Any Israeli change in this respect leads to dangers and woes in the region that no one can estimate.’ Sheikh Salameh also commented on the instructions of Benyamin Netanyahu, the Israeli Prime Minister, to judicial and security branches to enforce supervision of the squares of Al-Haram Al-Sharif in order to impose Israel's legal sovereignty over the Haram's complex. Sheikh Salameh argues that the furthest Mosque, al-Aqsa Mosque, is an Islamic mosque by a divine decree and this remains unalterably so until the day of judgement and no temporal decree could annul it. The area of the mosque, which is 141 damums is an Islamic waqf. Sovereignty and supervision on the Aqsa Mosque including all its smaller mosques, the Rock, Mahareeb (prayer niches) and all installations on the complex are Muslim property and under Muslim control with no challenge to this accepted from any party, whatsoever.

Sheikh Salameh insisted that what the Awqaf -Islamic Trust Authority- is undertaking in terms of construction and renovation in the Aqsa Mosque is a legitimate right and obligation for Muslims towards their mosques and their places of worship as stipulated by the Quran and its teachings in this respect.’ Informal arrangements with respect to holy places, when there are no historical precedents or when there is no clear formal understandings, will not work in as relatively smooth a manner as the informal arrangements related to personal status matters. Hence the need to formalise understandings but this is not an easy process and the initial assessment is that such formalisation calls for a long arduous process of negotiation.

Second, what complicates further the possibility that there would be negotiations over the status of Muslim holy places in Jerusalem is the fact that Jews claim the right to pray in some of these holy places thus casting an alarming and serious doubt on full Islamic control of their own holy places. This is not the case with Christian holy places. Accordingly, where the Israeli authorities could be bending backward to accept and interpret the Christian Status Quo in a manner friendly to the
different churches, there is no formalised agreement with the Muslim Council, on the one hand, and there are Jewish claims that are categorically rejected by Muslims, on the other. The Palestinian mass anger which erupted following the opening of the Western Wall tunnel on Tuesday, September 24, seriously put in doubt the prospects of peacemaking as stipulated in the Oslo accords. Palestinians argue that the tunnel opening infringes on the rights of the different religions to their holy places. This most serious infraction threatens Muslim property of the Aqsa Mosque and all of its area, including the underground squares and area. In addition, there is a fear that the opening of the tunnel would be only one step in an Israeli plan to have access to the Mosque area in order to use it for Jewish prayers. This, according to Palestinian worst nightmares, would only be one additional step towards the eventual take-over of the Mosque, similarly to what the Israelis have done since 1967 with the Ibrahimi Mosque in Hebron.

Some Israelis have argued that the opening of the tunnel should have been linked with the withdrawal from Hebron and with allowing the Muslims to use Solomon' Stables or a roofed space adjacent to the Aqsa Mosque for prayers during the rainy season, especially on occasions when there are multitudes of faithful who perform Friday and other prayers. That the Israeli government has taken a unilateral step in opening the tunnel and hence put into question all existing arrangements and explicit and implicit understandings is a serious matter that risks to turn religious matters and issues into political issues. Apparently, when all sides respect the present arrangements and do not attempt to change them, then the possibility for religious co-existence, independently of political developments, becomes more realisable. However, when one side attempts to impose its religious and political prerogatives on the other side, with whatever claims, then we run the risk of confrontation and eventual halt of the whole peace process, or whatever has remained of it since the election of a right wing government in Israel in May 1996.

The Israeli action of opening the tunnel also affects negatively the attitudes of Palestinians on possible mutually agreed upon arrangements for the holy places in the city. In a survey undertaken in the first half of 1995, Palestinian respondents showed openness and respect to the status of Jerusalem and its holy places to the three monotheistic religions.

**Agreement**

The holy places in Jerusalem should be placed under the sovereignty of the respective religions.................66%

Jerusalem is the holy city of Muslims, Jews and Christians. There must be the same rights for the three religions in the city.............................................64%
Paradoxically, religious status of the holy places appears to be less difficult to resolve than the political issue of sovereignty over Jerusalem. This conclusion is correct if religion is kept out of politics, and vice versa, but when the two get mixed, intentionally or not, then it becomes very difficult to maintain the distance between religion and politics. The confrontations that followed the opening of the tunnel, point clearly to this conclusion.

In fact, Palestinian Jerusalemite respondents, in early 1995, were more open and accepting of respective sovereignty of the different religions over their holy places in Jerusalem than the national Palestinian sample. Seventy-nine percent of Jerusalemites would agree to such a proposition. This is significantly much higher than the overall Palestinian agreement. This disparity between Palestinian Jerusalemites and other Palestinians was also evident in percentages of agreement to the following statements:

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Jerusalemites</th>
<th>Palestinians</th>
</tr>
</thead>
<tbody>
<tr>
<td>All of Jerusalem, including the Jewish part, should be under the control of Palestinians.</td>
<td>67%</td>
<td>83%</td>
</tr>
<tr>
<td>The final status of Jerusalem is non-negotiable because it is an Islamic trust (waqf).</td>
<td>46%</td>
<td>67%</td>
</tr>
<tr>
<td>Jerusalem can remain an undivided city provided that its eastern part is the capital of the state of Palestine.</td>
<td>65%</td>
<td>42%</td>
</tr>
<tr>
<td>Jerusalem can remain an undivided city provided that Palestinians and Israelis have their own municipal councils and that both co-operate together in matters of mutual interest.</td>
<td>55%</td>
<td>29%</td>
</tr>
</tbody>
</table>

It is clear that the sovereignty/autonomy option played up by Muslim and Christian religious bodies have the support of a relatively broad base of their own populations. Of interest is that this support is not exclusive and that the respondents acknowledge the right of all three religions to exercise similar sovereignty option over their holy places.

Palestinian Jerusalemites are more accommodating than other Palestinians with respect to the option that Jerusalem will remain undivided with East Jerusalem as the capital of a Palestinian state: in fact, almost two-thirds of them approve this option to only two-fifths of the general population. Jerusalemites are also more open to the possibility of having parallel municipal councils with co-operation between them as
fifty-five percent of them agree to the option in contrast to only 29 percent in the general population.

Less than fifty percent of Jerusalem Palestinians subscribe to the notion that Jerusalem is non-negotiable because it is an Islamic trust. In contrast over two-thirds of Palestinian respondents approve of this statement. In a society that is considered to be quite religious and conservative, the percentage of Jerusalemites who subscribe to the Islamic trust notion reflects pragmatism and realism on the need to find a solution in the city acceptable to all three religions.

Finally, only two-thirds of Jerusalemites believe that all of Jerusalem should be under the control of Palestinians. Considering the overwhelming approval by other Palestinians on this statement, the presence in Jerusalem of one-third of respondents who do not agree with this option indicates once again that there is a Palestinian population base in the city that is willing to consider a compromise solution, even when the options available are not necessarily in favour of the Palestinians and their position.

In conclusion:

1) Principles or arrangements of religious autonomy in civil and personal status matters, have evolved since 1967 and they are accepted as workable by both sides.
2) Principles of autonomy over Muslim holy places and Status Quo in Christian holy places are operative in the city. While Christian Status Quo is written with a history and tradition of interpretation, this is not the case with the Muslim autonomy over the Muslim holy places. Misunderstandings, with political motivations, are likely to develop and put Palestinian and Muslim-State relations under stress. The opening of the Western Wall tunnel and the confrontations that followed it, is an indication of the sensitivity involved.
3) Arab Palestinian Jerusalemites are clearly in favour of workable autonomy relationships which respect the rights of the three monotheistic religions to their respective holy sites.
4) Workable autonomy relationships on religious matters cannot succeed for the long run if the political issue of Jerusalem is not resolved to the satisfaction of both national groups. Here again, Arab Jerusalemites show pragmatism when a majority of them accept compromise political and municipal solutions in a future undivided Jerusalem.

2. Jerusalem Palestinians outside municipal boundaries

According to Israeli statistics for 1993, the Palestinian Arab population in East Jerusalem was 160,800 or 28.3 percent of the total population of Jerusalem.\textsuperscript{11} The Israeli authorities, both at the national and municipal levels, would like to keep the demographic balance in the city at 28-72 Arab-Jewish percentage. In order to do so, various constraints and restrictions, administrative and other, have been exercised on the Arab population of the city since 1967. Besides, the new exclusively Jewish
suburban neighbourhoods which encircle East Jerusalem has ensured that a Jewish majority actually reside in East Jerusalem, thus making it impossible to separate the Eastern from the Western side.

As a result, there are thousands of Palestinians who have left the city since 1967. Estimates differ according to the source. The Israeli National Insurance Institute claims that, in 1995, 15,000 Palestinian families were living outside the municipal boundaries of Jerusalem. Another estimate places the number of Arab Jerusalemites who live outside the municipal boundaries at 60,000. Still, a third source puts the number of Arab Jerusalemites who emigrated from the country at close to 17,000 while those who were obliged to leave the city for different reasons, including housing shortage, at close to 12,000. Between 1967 and 1993, the net growth of the Palestinian Arab population of Jerusalem was 92,200 person. A loss of 29,000 inhabitants to migration, both internal and international, means that one third, or 31.5%, of the actual growth of the Arab Palestinian population of Jerusalem, was lost.

Based on these figures, an anticipated annual loss of 0.9% of the Jerusalem Palestinian population is expected to emigrate, either to other localities in the West Bank or abroad. According to this estimate, over 17,000 Palestinians from Jerusalem will leave the city in the next ten years. The Jewish-Arab balance of 72-28 percent in the city, which is an Israeli objective, will likely be maintained into the twenty-first century. But at what cost to Palestinians who live in the city? Will, on the other hand, the Israeli government and the Jerusalem municipality bear part of the cost and how?

The complications surrounding the ‘migration’ of Jerusalem’s Palestinians are political, legal and experiential. The Palestinians maintain that there is a serious threat to the Arab Palestinian and Muslim character of the city. Emigration is only one manifestation of this threat while the closure of the city, considered by Israelis an integral part of the state, is another. The closure has practically severed economic, social, educational, health and other links between the surrounding periphery and East Jerusalem. Israel creates new demographic, social and economic facts in East Jerusalem in order to make any compromise solution on Jerusalem impossible. Palestinian worry reflects itself in the fact that Jerusalem has become a standing item on the agenda of the weekly meeting of the Council of Ministers of the Palestinian National Authorities.

While official Palestinians may not be disturbed with the fact that those Jerusalemites, with Israeli identity cards, living outside the municipal boundaries do not receive Israeli services, they are definitely disturbed by the fact that the Israeli Ministry of the Interior tries, periodically, to withdraw Israeli identity cards from those Jerusalemites as well as from those who have temporarily moved abroad for educational, work, family and other legally justifiable reasons. This is seen as an attempt by Israel to lower the numbers of Jerusalemite Arabs with Israeli identity cards in order to limit or preclude Palestinian claims to the city.

As with Orient House and other Palestinian institutions in the city, the issue of withdrawing identity cards from Jerusalemites residing outside the municipal
boundaries is seen as part of an Israeli campaign to determine the issue of Jerusalem before the final status negotiations, as agreed upon in the DOP of September 13, 1993. Faisal Hussein, in charge of the Jerusalem portfolio in the Palestinian National Authority, has noted that the Israelis seek to create new facts in the city through the construction of settlements, undertaking great demographic changes and imposing a siege on Jerusalem. Hussein's position, which is a reflection of the PNA position, is that the Palestinians will reject any attempt to shrink or weaken the Palestinian presence in Jerusalem. The withdrawal of Israeli identity cards of Jerusalemite Palestinians falls under the Israeli attempt to shrink and weaken the Palestinian presence.

As to the legal dimension of this issue, it dates to the aftermath of Israeli capture of East Jerusalem in the June War of 1967. On June 11, 1967, the Israeli government decided to annex East Jerusalem and to extend Israeli law, jurisdiction and public administration over the eastern part of the city. On July 30, 1980, the Israeli government reaffirmed, in the Jerusalem Bill (Knesset Basic Law), the 1967 de facto extension of Israeli law, jurisdiction and public administration over East Jerusalem. The Bill also declared Jerusalem the eternal undivided capital of Israel.

As a result of these Israeli decisions, the status of Palestinians living in East Jerusalem became that of 'permanent residents'. This status is based on the law of entry to Israel which empowers the minister of the Interior to bestow or to issue permits for permanent residence in Israel. The law of entry to Israel stipulates that the permit for permanent residence ends when the bearer of such permit leaves Israel and lives in another country. A person is considered to be permanent in a country outside of Israel if any one of the following conditions applies to him/her:

1) stayed outside of the boundaries of Israel for a period of at least seven years.
2) he/she has a permit for permanent residence in that country.
3) he/she acquired the citizenship of that country by naturalisation.

Accordingly, any Palestinian living in Jerusalem with an Israeli identity card who decides to move to the surrounding Arab areas of the city, outside of the municipal boundaries of Jerusalem, is legally leaving Israel and living in another country. East Jerusalem, according to Israeli decisions, is part of Israel while the West Bank is not. The matter, however, is not that simple. The complexity of the issue lies in a variety of institutional, social, demographic, economic and other relationships and links which tie the surrounding Arab areas of Jerusalem with not only the Arab institutions and population of the city but with Israeli institutions, as well. This is amply clear in responses of 88 members of families who are living outside the Jerusalem municipal boundaries and, as holders of Israeli identity cards 'permits of permanent residence', continue to maintain instrumental ties with Israeli institutions, both at the ministerial and municipal levels.

In order to answer some of the questions posed by the presence of a substantial Palestinian Jerusalemite population living outside of the municipal boundaries of the city, a questionnaire was developed. While the 88 households reached in the Southern (Bethlehem) and Northern (Al-Ram, Dahiet Al-Bari) areas surrounding the expanded municipal boundaries do not constitute a random sample, they still provide
an experiential view of what it means to live outside the city while carrying the Israeli ID card with permanent resident status in Israel.

Two-thirds of the respondents, 67 percent, were born in Jerusalem proper; 15 percent were born in Bethlehem area; 5 percent were born in both Hebron and in Jordan and the rest were born in different parts of the West Bank and in Israel proper. The reasons cited for living outside the municipal boundaries revolve primarily around housing: 33% or 29 respondents moved because they built a house in their present place of residence; 28% or 25 respondents moved for family reasons, primarily marriage to someone in the West Bank; 26% or 23 respondents moved because of the high rent of apartments and houses in East Jerusalem and only 11% or 10 respondents moved out because of municipal and other Israeli taxes.

There is an apparent acceleration of movement into the West Bank, out of the Jerusalem municipal boundaries, starting in the eighties. The following table illustrates this point:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990+</td>
<td>19</td>
<td>21%</td>
</tr>
<tr>
<td>1989-1985</td>
<td>15</td>
<td>17%</td>
</tr>
<tr>
<td>1984-1980</td>
<td>23</td>
<td>26%</td>
</tr>
<tr>
<td>1979-1975</td>
<td>9</td>
<td>10%</td>
</tr>
<tr>
<td>1974-1970</td>
<td>5</td>
<td>6%</td>
</tr>
<tr>
<td>1969-</td>
<td>8</td>
<td>9%</td>
</tr>
<tr>
<td>No Answer</td>
<td>10</td>
<td>11%</td>
</tr>
</tbody>
</table>

The immediate reason, cited more than others, for moving out is the construction of a house or an apartment in the West Bank with 31 respondents, or 35% so answering. It is followed closely by marriage from outside Jerusalem with 26 or 29% of respondents. High rent of housing in East Jerusalem was number three with 21 respondents making up 24% of all respondents. Israeli municipal and other taxes as well as other reasons were the cause for the moving out of 7 respondents each, or 8% for each reason. Finally, the high cost of real estate in Jerusalem was the reason for the moving out of 4 respondents or roughly 5 percent.

It is clear that the reasons or causes that push Palestinians out of Jerusalem are related to the housing situation on the one hand and to the natural family links and networks that cross the boundaries between Jerusalem and the West Bank, on the other. Israeli housing and planning policies in East Jerusalem and the preferential treatment received by incoming Jews who wish to live in East Jerusalem have created the housing problem for East Jerusalem Palestinians. While there may not be an official or formal policy of encouraging Palestinians to leave, it is implicit in the difficulties involved in getting a housing construction license, as at least a number of respondents have pointed out. Tied to these policies is the expected increase in rents in East Jerusalem which naturally complements restrictive Israeli policies and planning strategies for East Jerusalem.

The fact that so many marriages take place between East Jerusalem and the rest of the West Bank is a confirmation of family and other natural links and networks that
tie East Jerusalem to the West Bank and vice versa. This is confirmation, if there is need for such, that East Jerusalem is an integral part of the society at large. While for Israelis, the idea that the West Bank is a separate Palestinian territory; for East Jerusalem Palestinians this is not so. Even when they move out of the municipal boundaries they continue to be tied to Jerusalem institutions as the following table illustrates:

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Insurance</td>
<td>60</td>
<td>67%</td>
</tr>
<tr>
<td>Kopat Cholim Clalit</td>
<td>55</td>
<td>62%</td>
</tr>
<tr>
<td>Arnona Municipal Tax</td>
<td>40</td>
<td>45%</td>
</tr>
<tr>
<td>Israeli Income Tax</td>
<td>38</td>
<td>43%</td>
</tr>
<tr>
<td>Israeli Property Tax</td>
<td>27</td>
<td>30%</td>
</tr>
<tr>
<td>Other Kopat Cholim</td>
<td>18</td>
<td>20%</td>
</tr>
</tbody>
</table>

Eighty-two percent of all respondents are medically insured in Israeli Patients' Funds. One can also say that they continue to conscientiously pay their dues to National Insurance and they maintain links with the Taxes authorities, both municipal and state, to an unexpected extent.

But what do those who continue to pay their dues and taxes get in return? Thirty-five respondents, or 39% of the total number, continue to receive National Insurance payments while only 7 respondents, or roughly 8 percent, get assistance from the social welfare office of the municipality (5 respondents) or get help in educational tuition fees for their children (2 respondents). The latter are probably Arab Israelis whose Israeli nationality guarantee that they receive municipal services, irrespective of place of residence.

Sixty-eight respondents, or 76% of the total, receive medical treatment through Chopat Kholim and other Sick Funds in Israeli clinics and hospitals. One can argue that the Chopat Kholim is the one institution that fully reciprocates the dues paid to it. Other municipal and state institutions do not formally reciprocate and, in fact, put obstacles and problems to Palestinians with Jerusalem ID who are living outside the municipal boundaries.

In educational services, only 8 out of 89, or 9% of all respondents, have children who attend Jerusalem municipality schools. The great majority of parents send their children to private schools in the West Bank, 32 out of 89, or 36%, while 16 respondents, or 18% of all respondents, send their children to private schools in East Jerusalem. Government schools in the West Bank provide education for children of 13 families while UNRWA schools offer education for offspring of 3 families followed by Israeli Ministry of Education which offers education for offspring of 2 families.

It is clear that those East Jerusalemite families pushed out of the city into the West Bank periphery tend to be middle class who send their children to private schools. Thus, they are paying taxes, including municipal arnona tax to Jerusalem
municipality, but in fact they are not receiving the services. This is a double burden but probably these families live with it because they can keep their Israeli ID card with them. One reflection is that you cannot treat East Jerusalem Palestinians as ‘Permanent Residents’ such as the case with the United States. These people were born in the city, and if they were born somewhere else they were present in the city in 1967. Thus they are not like Americans, Australians or others who reside in Israel and need to get their residence permit renewed until they qualify for permanent residence. Legally, some may argue that ‘permanent residence’ law applies to all in an equal manner, including East Jerusalem Palestinians. The fact that these people did not take Israeli citizenship and hence resolve their permanent residence status has to do with the politics of the situation and the fact that the status of the city is disputed. This may be another argument, for some, to proceed towards taking away the Israeli ID cards from all those who reside outside the municipal boundaries.

This is in order to unequivocally emphasise the status of Jerusalem as the eternal capital of the Jewish state. But, on the other hand, the Palestinian response may be complicated enough on the ground, such as continuation of payment of arnona tax by a significant number of Palestinians residing outside the municipal boundaries. Another possibility which is contemplated by a significant minority of those interviewees is the application for Israeli citizenship. A third possibility is the legal defence procedure whereby each case of withdrawal of Israeli ID card is fought through the judiciary system of Israel.

Sixty-six of the respondents, or 74%, state that they move freely between their current place of residence and East Jerusalem. This confirms that the biggest advantage in days of closure is having a Jerusalem Israeli ID card. However, in the last closure, which was hermetic for the first two weeks, Palestinians with Jerusalem ID cards could not move freely. Nineteen respondents, or 21%, experienced this as they were not allowed to go back and forth between Jerusalem and the West Bank.

East Jerusalemites outside the city have some real problems, among two are notable: First, 45 respondents, or 51%, do not receive national insurance payments. Of these, more than half; 23 respondents, do not receive these payments even though they continue to pay national insurance dues. Second, 45 respondents, 51% of the total, do not refer to Israeli institutions when there is a need because of fear that their Jerusalem Israeli ID card would be withdrawn. This is a serious problem, quite inconvenient and limiting, especially when there is a need to make contact with Israeli institutions. Another problem faced by periphery residents is that they do not know to whom to go when they have problems that require contacts with Israeli institutions in Jerusalem. At least 36 respondents, or 40%, feel so. Other problems range from the fact that the municipality does not offer social and educational services needed by members of my family (22 respondents or 25%); ‘I could not until now succeed in the family reunification of my husband/wife’ (21 respondents or 24%); the difficulty ‘in registering my children in my Jerusalem ID card’ (17 respondents or 19%); the difficulty of movement between the West Bank and East Jerusalem ‘for me or for members of my family’ (16 respondents or 18%) and finally concerning the problem of not being able to register to any of the Sick Funds (15 respondents or 17%).
When asked about the most important reason that makes the respondent want to keep his/her Jerusalem ID card, 46 respondents or 52%, mentioned the fact that they are originally from Jerusalem and that they would not want to give this right away. The more mundane and psycho-political reasons received far less responses with 14 respondents, or 16%, specifying free access between the West Bank and East Jerusalem; 10 respondents, 11%, expressed fear from the future and not knowing how things will turn out, while 8 respondents each, or 9%, mentioned the rights associated with national and health insurance and not accepting the Israeli policies that aim to minimise the number of Arabs in the city. Clearly, there is an emotional attachment at the personal level to the fact that a person was born in Jerusalem. Injustice is clearly felt when a person born in the city cannot, for practical and other reasons, continue to live in it. Someone else who was born in a different country can automatically be granted the right to live in the city just because Israeli law says so.

To illustrate how strong the attachment to the city, 39 respondents or 44%, continue to pay *armona* municipal tax, even though they are not living in the house/apartment/room for which they are paying the tax. The municipality can set up a system to ‘catch’ those paying without residing but it will have to be a rather inflated system that will take away a lot of time, energy, manpower and budget of the municipality. The system will become a bureaucratic burden and will certainly defeat the purpose for which it was originally set to accomplish.

Responses to the following statements on the future of Jerusalem indicate a rather pragmatic and realistic attitude towards the possibilities for the city:

<table>
<thead>
<tr>
<th>Agree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arabs and Jews in the city have to manage their affairs without the interference of the other side. Both, however, have to respect the decisions of the other side even if they do not agree with them.</td>
<td>66 - 74%</td>
</tr>
<tr>
<td>Jerusalem should remain one city provided the Eastern part becomes the capital for the state of Palestine.</td>
<td>63 - 71%</td>
</tr>
<tr>
<td>It is not possible to accept any political solution that would not consider the rights and privileges that should be received by the holders of the Jerusalem ID card who are residing outside the municipal boundaries.</td>
<td>65 - 73%</td>
</tr>
<tr>
<td>I am willing to accept a political solution to Jerusalem that would guarantee the sovereignty of Palestinians on the Eastern part even if this led to the loss of the Jerusalem ID that I carry.</td>
<td>50 - 56%</td>
</tr>
<tr>
<td>The political solution to Jerusalem must guarantee free access to all believers from the three heavenly religions because of the presence of the Islamic, Christian and Jewish holy places in the city.</td>
<td>82 - 92%</td>
</tr>
</tbody>
</table>
If the political solution would probably lead to the possibility of my loss of my Jerusalem ID, I think seriously to get Israeli citizenship in order to avoid such a possibility.

The political solution must enable Arabs and Jews in Jerusalem to elect their respective municipal councils provided that the two councils co-operate in common matters related to the interest of the city as a whole.

Because of the nature of Jerusalem, its municipal administration should evolve in such a manner that Palestinians and Israelis can participate in specialised committees to deal with the various matters of the population in an equal and fair manner that would guarantee the interests of all parties in the city.

The future does not promise a solution that would satisfy the minimum of Palestinian rights in the holy city.

The problems that appear to be most worrisome for Palestinians residing in Arab outlying areas are the withdrawal of the ID card and the housing shortage. Besides, practical matters such as family reunification, employment, free access were more mentioned as problems than the political and national matters. Solutions suggested included that rights should be guaranteed irrespective of place of residence, free access, political and the possibility of getting Israeli citizenship.

3. Language

Jerusalem is divided along the language barrier, if by language and its use one specifically refers to community definition and intercommunal power relationships. It is rare, as an example, to see shop signs and other commercial signs in East Jerusalem that use Hebrew. The standard shop and commercial signs in the Arab part of the city are written in Arabic and also frequently in English. Exceptional cases where shop signs are also written in Hebrew is when the clientele is also Jewish, as in the bakery in Musrara, which is located in the area of the previous no man's land between the two parts of Jerusalem.

The municipality of Jerusalem has clear statutes that require shop signs to be written in Hebrew, with allowances for additional languages. Clearly, Palestinians in Jerusalem do not pay heed to the municipality's ordinances on this matter. This, however, is no great infraction since it does not involve a real challenge to power and control of the municipality and of the Jewish majority in the city. In fact, the municipality can always argue that this is a cultural matter that does not merit its transformation into a matter for political confrontation. This position is clearly in opposition to the stand of the municipality on the status of Muslim holy places in the city. As mentioned above, the claim by Muslim religious officials of the Islamic nature of the complex of Al-haram Al-Sharif constitutes, according to municipal and
other Israeli officials, a clear challenge to the sovereignty of Israel over the whole of the city, including the Muslim holy places.

But in spite of the fact that language has become a defining cultural and national-communal boundary in Jerusalem, there are still instances where language learning, of either Hebrew or Arabic, has been initiated for different purposes. Early on after the June War of 1967, Israeli cultural institutions, such as the Martin Buber Centre of the Hebrew University, started offering Hebrew courses for Arabs in the West Bank, including East Jerusalem. The municipality of Jerusalem, through co-ordination with various ulpanim, language-learning centres, also offered Hebrew-learning courses and, to a more limited extent, Arabic-learning courses. The purpose of language-learning differed, according to the side offering the course and to the learners of the specific language.

On an institutional level, Arabs in Jerusalem were not so keen on introducing Hebrew as a topic of learning in their schools. In fact, all schools in East Jerusalem that are not affiliated with the municipality or with the Israeli ministry of education, do not offer the Israeli Bagrut (Secondary Certificate) syllabus. Hebrew, accordingly, was not needed for purely academic purposes in the Arab schools of the city, since they have their own syllabus for a secondary certificate (Tawjihi) affiliated with Jordan, until the coming of the Palestinian National Authority.

Recently, however, there is apparently a change in attitudes of Palestinians and others in charge of Arab educational institutions in East Jerusalem with respect to the learning of Hebrew. Almost all of the private Christian schools are offering a course in Hebrew for their students. This attitude change has taken place since three years ago when the Freres, Rosary, Terra Sancta and St. George schools introduced Hebrew into their curriculae. St. Joseph’s Girls School at Jaffa Gate started offering the course in 1995 while Schmidt’s Girls School at Damascus Gate is having difficulties in finding a permanent Hebrew teacher and, accordingly has thought it impractical to offer the course this year.

Learning Hebrew is also part of the curriculum at Palestinian Al-Quds University, the Jerusalem University, which is planning to offer a comprehensive language instruction course in October 1996. Needless to say, the municipality and ministry of education schools in East Jerusalem, such as Ma’munieh Girls School, Rashidya Boys School and Shu’fat Boys School, among others, are offering regular Hebrew courses and, at least the first two schools, offer the option for students to sit for Bagrut certification exam together with Palestinian Tawjihi exam.

Learning Hebrew or Arabic is most often undertaken for utilitarian purposes and not necessarily for the promotion of understanding and/or mutual respect among Jerusalem’s communities. Those who sponsor or encourage language-learning, such as Martin Buber Centre, hope that this will make it easier for people to communicate. While one can use the language skills gained in having access to media of all sorts, still the skills in themselves cannot be the basis for understanding and mutual respect.

The hegemony of Israeli institutions in East Jerusalem is exemplified by the use of language in a number of different situations: Israeli banks operating in the Arab part of the city use mostly Hebrew forms with no Arabic parallel. Still in their
automated machines which give updates on clients' banking accounts, the instructions are written in Arabic and Hebrew. Bank account statements are also given in Arabic at the Discount Bank branch at Damascus Gate. But the overall schedule of all Israeli banks operating in the Arab part of the city follows the schedule of the main banks in Israel. One exception, pertaining to certain services, is the Post Office Bank in the main post office at Herodus Gate which offers services on Saturdays till 1:00 pm. The signs at the post office are in Hebrew, English and Arabic and some of the forms, particularly those for incoming packages, are in Hebrew, English, Arabic, Russian and sometimes French.

The forms of the municipality pertaining to arnona tax are mostly in Hebrew with some indications of the nature of the form in Arabic. Most forms at the municipality and at various ministries and offices are in Hebrew. Often, when there are Arab clients who frequent a particular office, Arab employees and clerks are present who would modify the effect of the non-existence of forms in Arabic. But Arab clients need to have patience as the number of clerks serving them in their own language is far below their proportion in the total population of the city. The outstanding example is the Jerusalem municipality arnona tax: any Arab visitor to the Municipality building can attest that the three or four Arab employees who are supposed to take care of them are not enough to efficiently deal with their queries and needs.

Another example that puts Israeli bureaucracy to shame is the East Jerusalem Ministry of the Interior office in East Jerusalem on Nablus Street. While the majority of employees there are Arabs, a fact which modifies the need to deal with Hebrew forms and the stress thereof, the fact that the office is too small to absorb the large numbers of clients and the bureaucratic complications that make the visit for this specific office necessary for hundreds of Palestinian Jerusalemites each day are reminders that two standards of relationships between Israeli bureaucracy and Israelis and Palestinians in Jerusalem operate.

Street signs, including those posted in East Jerusalem, clearly indicate who is in control. The municipal white street signs show Hebrew and English in a predominant manner while Arabic appears in smaller script in the middle. The same pattern applies to the green inter/intra directional traffic signs: Jerusalem is transliterated into Arabic as Yerushalim (Hebrew name for Jerusalem) or sometimes Yerushalim-Al-Quds (Hebrew and Arabic names for Jerusalem). The orange tourist information signs are predominantly Hebrew and English at top and bottom, respectively, with Arabic in smaller script in the middle. On the Western side of the city, no Arabic is included on the orange signs. Parking signs have instructions in both Hebrew and Arabic but not in an unanimous manner in all places.

Another clear indication of who is in control is the Israeli practice of naming streets in the Arab part of the city that reflect Jerusalem's history and significant events from an Israeli perspective. A recent example is the naming of the street adjacent to the Eastern part of the Jerusalem City's Wall in the name of the deceased Israeli Deputy Defence Minister who took part in the 'capture' of Jerusalem in June 1967. This step led to repeated attacks on the signs that show the name of the street.
and to their demolition. The authorities took the matter seriously and, apparently, so did some Palestinians.

The Kopat Cholim Clalit and various Israeli Sick Funds and other utilitarian and business oriented institutions, operating in the Eastern part of the city, use Arabic and Hebrew in equal fonts (scripts) for their advertising signs. Forms are mostly in Hebrew but the fact that there are Arab or Arabic-speaking employees who deal with the matter of serving Palestinians in a business-like manner eases the inconvenience caused by the Hebrew forms.

The major conclusions that can be drawn from this overview of the language situation in Jerusalem are as follows:

1) There are municipal ordinances on language requirements for shop and business signs. These are not enforced in the Eastern part of the city. Reasons for non-enforcement could vary but clearly infractions of language ordinances do not pose a serious threat to the authority of the municipality and its control over the entire city.

2) Since 1967, a tradition of language learning has emerged especially of learning Hebrew by Arabs. Recently, Arab educational institutions in East Jerusalem have opted to offer Hebrew courses, primarily for utilitarian purposes.

3) When relations between Israeli institutions and Palestinian Jerusalemites are utilitarian and business-oriented, the tendency to use Arabic in an equal manner to Hebrew appears to be non-problematic. Still the forms and the major transactions are done in accordance with Hebrew and Israeli schedules and preferences, language and otherwise.

4) When relations between Israeli institutions and Palestinian Jerusalemites are a clear reflection of power relationships, such as municipality arnona tax and other services and the ministry of interior office in East Jerusalem, language and other practices have become a clear reflection of the power and control relationships, in spite of some protestations and justifications to the contrary by Israeli officials. The inconvenience to Palestinian Jerusalemites continues in these and other offices even when there are Arab or Arabic-speaking clerks, either because their numbers are too small to handle all cases efficiently and politely or because of Israeli bureaucratic complications that make the presence of hundreds of Palestinians at some of these offices a required daily ritual.

5) Language in Jerusalem remains a clear community defining line. As long as the two national communities are in political conflict, the language barrier is not likely to be overcome in order to make place for reconciliation and mutual understanding. The utilitarian purpose of language learning appears to be paramount at this stage among those who opt to learn the other language in both Hebrew-Israeli and Arab-Palestinian communities.
Notes


POLITICAL CULTURE
PILLARISATION, CONSOCIATIONAL DEMOCRACY
AND THE FEATURES OF BELGIAN POLITICAL CULTURE

Jeffrey Tyssens (VUB)

Introduction

If one studies the attainment and the practice of the compromise solution for Brussels, it is impossible to isolate the subject from an analysis of the general features of the Belgian political system. In many respects, the Brussels model mirrors, be it in a very specific way, a number of appeasement techniques which have been or still are handled in the major cleavages dividing the Belgian res publica. In the other papers, more detailed information will (have been) be provided on the particularities of the Brussels model. My only aim is to give a more general kind of description of the Belgian political system, which is often conceptualised in a way very much resembling the approaches of the political systems of the Netherlands or of post-war Austria. In doing so, Belgium is compared to those other small democratic states with deep political cleavages and clear cut divisions of the population, where, as opposed to the expectations of mainstream American political science, a striking political stability prevails. This phenomenon has been analysed with the combined concepts of “pillarisation” (a not very elegant translation of the Dutch concept of “verzuiling”) or “vertical pluralism” on the one hand, and of “consociational democracy” on the other. Consociationalism and pillarisation have generated a very specific style of day to day conflict management, raising a number of omnipresent features of political praxis to a relatively high level of refinement and efficiency.

1. Pillarisation or vertical pluralism in Belgium

First of all, a definition of “pillarisation” is required. For a long time, there has been discussion about the way to define “pillarisation”, but nowadays a more or less general consensus exists around a six element definition as it has been most accurately stated by the Belgian sociologist Jaak Billiet. These elements can be enumerated as follows:
1) one has to be confronted with a number of parallel webs, or parallel networks if you will, consisting of very different organisations (trade unions, youth movements, mutual aid societies, cultural groups, political associations, hospitals, education institutions etc.);
2) each of these parallel webs has to be integrated around a common ideology (which can be of a confessional kind, but this is by no means necessary: this ‘broadening’ to the general concept of ideology resolves the old - and in fact quite sterile - dispute of the sole possibility of a confessional, church-linked type of pillarisation);
3) all of these webs have to be linked to a specific political party, which is as such in a position allowing the legitimate articulation of web-linked demands on the level of decision making institutions;  
4) all of these webs have to be working on very different fields and levels of society, so as to organise the day to day life of their members from the cradle to the grave, as the expression wants;  
5) as such, these webs or networks have appropriated a number of functions otherwise exercised by the state (possibly, you could even say that they are 'normally' exercised by the state), and for that reason they have to receive a certain kind of recognition of that same state, most of the time consisting as well of a certain type of subsidising (in Belgium this principle is named 'subsidised freedom');  
6) finally, the existence of all these webs or networks must give rise to a clear division of the population into separate "worlds", a division sometimes described by Anglo-American political scientists as 'compartamentalisation'.

So there is pillarisation when the cleavages of a political system are crystallised in a number of ideological "worlds", profoundly separated one from the other, exercising a number of functions in stead of a desisting and at the same time fund providing state. This way of organising large parts of social life around ideologically constructed networks is not an a-historical phenomenon. With Steininger, one may say that their emergence is closely linked to the process of broadening bourgeois democracy at the end of the 19th and in the beginning of the 20th century. Pillarisation presents itself as a strategy of the political elites in order to stream, to channel, or to put it somewhat crudely to discipline the masses freshly provided with suffrage of one kind or another. In Belgium the broadening was gradually fulfilled in answer to political action, that is to say in answer to political strike set up by a well organised socialist labour movement. The process was more or less fulfilled when general (one vote) male suffrage was introduced immediately after the first world war. Usually, the defensive reflexes of established religions (against secularisation and/or socialism) are mentioned as an essential motive for their pillarisation. This element must not be put aside of course, but it can by no means be generalised as an explanation: it too obviously omits to account for the prime agency of political elites in this matter (one could discuss on the relation with, or even in a certain respect on the integration of clerics with the political élite, but this is not important for the issue at stake) and, what is more important, it can not account for parallel pillarisation phenomena of non-confessional groups. As such, Belgian pillarisation has not grown around the two "worlds" of Catholics and anti-clericals ("laiques" or Belgian style secularists), as has sometimes been stated. Belgian vertical pluralism essentially turns around three pillars:  
1) a large and indeed confessionally integrated catholic pillar, largely hegemonic in a number of fields, with its most important stronghold in Flanders;  
2) a still important but somewhat smaller socialist pillar, with a clear centre of gravity in the Walloon industrial regions (mainly the 'black belt' from Mons to Liège), for whom class based ideology largely supersedes the old anticlerical undertones;
3) a small liberal pillar, less well integrated, not as broadly present as the two others, but nevertheless capable of providing the essential features for the cohesiveness of a proper ‘world’, where again a social and economic ideology dominates political identification, superseding classical anticlericalism even more than in the case of the socialists. The liberal pillar does not have the clear cut centres of gravity of both others, although large cities as Brussels have long possessed a liberal outlook.

A number of general remarks have to be added to this general presentation of Belgian pillars. First of all, the historical construction of the organisational apparatus has started some time before the turn of the century. In practice, this means that the parcels of the public domain have essentially been divided at that moment and that political newcomers have had enormous difficulties in conquering a proper place between these established ‘feuds’, if this plastic anachronism is allowed. Nevertheless, the structural influence of this constellation upon these newcomers has been important in this respect that a lot of them have tried, one way or another, to imitate the pillarised structure. Most of the time their success was fairly limited, although it must be said that the Brussels francophone party Front Démocratique des francophones at a given moment has succeeded fairly well in establishing a pillar-like network in the capital. In the case of the Flemish nationalists, these attempts seem to have been less fruitful.

On the level of the decision making processes, pillarisation has clearly survived the specific conditions of its genesis. With the effects of general suffrage long digested, they still remain essential levers of the political system. Federalism has only partly affected their position. Indeed, the political parties have split up on a linguistic base, making interest articulation a less easy matter than before. Nevertheless, pillarised organisations have adapted to the new parameters of state structure. While remaining national in shape most of the time, formal or informal regional subdivisions have been purported within most of these organisations. The integration of the corporate networks with the electoral networks has become somewhat more complex than in the past, but it has not been broken down through state reform. If pillarisation could be menaced in the future, it will more likely come from the de-pillarisation effects at their respective bases, where the detachment of their members is slowly advancing, identifications and loyalties becoming less evident than they have been in the past. Already in the 1960ies this phenomenon has been remarked, mainly through the new success of the linguistic/‘community’ parties. Today, right wing populism seems to get the most benefit of these diminishing loyalties towards the traditional “worlds”.

2. Consociational democracy

The political interpretation of vertical pluralism as a strategy of political élites immediately links the whole of the pillarisation phenomenon to the concept of consociational democracy. As we have already stated, the concept of consociational democracy has been used to describe those democratic political systems where profound cleavages seem to combine with a striking political stability, as ‘measured’ by
the relatively high degree of continuity of the political actors present and of the essence of the institutional frame they are working in (which is something else than a formal conservation of the existing), the absence of severe political violence, casualties etc. It was mainly the Dutch political scientist Arend Lijphart who, although his analysis contained a number of conceptual and empirical flaws, advanced a number of essential explanation schemes allowing to account for a positive role of pillars as institutionalised expressions of political division. Classical political science always presented the combination of pillarisation and political stability as a fundamental abnormality, which could only be explained by the crosscutting of the cleavages, so as to have a given pillar internally united on one item but profoundly divided on others.

While this element of the crosscutting of cleavages is definitely not without relevance, as to Lijphart, it did not constitute the rationale of the system. Lijphart stated that it was due to the segregation of the different worlds as such that appeasement could be reached. The non-contact between the members of the pillars in their essential social actions and their discipline and loyalty to the élites of their respective networks precisely allowed the same élites to monopolise the interpillar contacts and to apply the techniques of what was referred to as prudent leadership. In this respect, compromise seeking requires a number of essentials. The most important element here is the abandonment of the majority principle in favour of decision making through consensus, all pillars having to be associated one way or another to the fundamental compromise. Here again, pillarisation operates as a fundamental instrument. In order to avoid confrontation on specific items - education, health insurance, redundancy indemnities, cultural work etc. - autonomy granting (or ‘subsidiarity’) was introduced so as to allow each pillar to organise these conflict prone elements of social life on an autonomous base, while the financial needs are covered mainly by the tax collecting state itself.

In the Belgian case, this distributive logic of the system has been organised through a series of majors pacts, that is to say through three party conventions (sometimes even completed with the adherence of smaller political formations, but their role usually remained marginal) covering whole sectors of society, establishing appropriate financial mechanisms (that is: subsidising measures) and conflict management devices. Traditionally, political science has presented these large political pacts too easily as deo ex machina constructions. Recent historical research clearly shows that they practically always resulted from a long term pragmatic process, constructing step by step something that is supposed to be an ‘equilibrium’ in a given field. The great pacts usually only rationalise these constructions in one large frame, which generally retain a high degree of complexity. State reform has certainly not diminished this complexity, quite on the contrary. Confessional or social ‘equilibria’ now had to account for regional or ‘communitary’ equilibria far more than they had to in the past. This is not everything. The quotation marks around the word ‘equilibrium’ are by no means a coincidence. Pluralist prejudice of mainstream political science has too evidently covered up the fact that quite some of these global pacts revealed themselves not to be non-zero sum games where all political agents received a fair share. More often than not did they confirm and institutionalise the
hegemony of one agent or another. In sectors as health care, education or culture, the existing consociational structures definitely reflect and help to preserve the large predominance of the catholic pillar. As such, consociationalism does not at all preclude a more or less hegemonic outcome of negotiations.\textsuperscript{6}

3. Consociationalism and political culture

As has been mentioned, the key element of consociationalism is the abandonment of the majority principle and the option in favour of consensus. This implies that power sharing and actual veto power, both limited of course to the major political agents, become the rationale of the system. The financial guarantees for the autonomy of the pillarised subcultures in conflict prone areas are covered by an overall and systematised give and take mechanism (in Belgian slang it is sometimes referred to as the ‘wafer iron’). The traditional parliamentary function is very much affected by these political necessities. The overall tendency towards the weakening of the legislative power in favour of the executive power is at the same strengthened and made more complex by these consociational mechanisms. The executive power is by no means the single apparatus for day to day conflict management or compromise administering, although it frequently acts as the apparently neutral sentinel of different equilibria. Besides the classical institutions of liberal democracy, a number of parallel networks for decision making are functioning, whose existence has little or no relation with the fundamental constitutional structures, but whose importance in the management of distributive mechanisms and in avoiding the rise of new conflictual issues clearly is essential. Formally, the government covers these compromises but they frequently take shape elsewhere. Parliamentary control then only has a marginal significance, as parliamentary groups fall under the same disciplining tendencies as the rest of the political party and its pillar. One of the most striking examples of this mechanism is the functioning of the permanent schools pact commission from 1959 up to the 1980ies. Every single decision of the minister(s) of education regarding issues with implications for both official and private (mainly catholic) schools had to be covered by a three party consensus in this commission: otherwise the decision would have to be altered. Here, the effectiveness of formalised veto power reached an apogee, but it definitely does not need to be stated in this manner. The commission type of compromise seeking was already used in educational matters long before the schools pact of 1958, using consensus or veto power without any formal covering.

These strategies of compromise making induce a number of effects which mark the Belgian political culture in quite a number of respects. First of all, discussion on principles and refined ideological theorising do not fit into the system. The diluting of ideology has profoundly marked Belgian political life. One interesting illustration is the quasi complete absence of Belgian intellectuals in the theoretical production of the international socialist movement, an absence clearly registered by the more theory-oriented German social democrats. Knowing this, it is striking to note that the one exception to the rule, i.e. Henri de Man, precisely wrote his major theoretical treaties while living in Germany. The same observation goes for the liberal and catholic sub-
cultures. This element is mirrored in the form compromises take. Great ideological statements are seldom. Compromises are rarely the object of serious public debate, quite on the contrary: they generally rest upon discretion or semi-discretion. No wonder debate culture is very poor in Belgium. Compromises take the form of more or less complex technical solutions, veiling their underlying, necessarily ideological significance. The professional structure of the political class definitely fosters this technical cosmetics. A large part of the politicians of whatever obedience are lawyers, sharing a similar discourse, superseding to a certain extent their political differences. It must be mentioned that other features of Belgian bourgeois or middle class life style seem to help in daily conflict management processes. It would be something of an overstatement to say the system runs on alcohol, but it can hardly be denied that a well filled dining table, wines and digestives of better quality often help to take off the edges. Besides this benign Burgundian fringe, the constellation eventually lead, at least for quite a lot of fields of political life, to a rather dreary image of political life, consisting of middle of the road decisions and of an outspoken mediocrity in tackling problems requiring more effective and dynamic approaches. Recent conflicts around the Belgian judiciary prove how ineffective consociational mechanisms can become, eventually leading to a point where the legitimacy of the system as such is put at stake.

Not every cleavage of Belgian political life is equally fit for the type of conflict management described here. In its historical evolution, consociationalism has proved most effective in tuning down confessional conflicts, which gravitated mainly around questions of control of the educational system. This conflict area, which at a given moment lead to a kind of mimed civil war on the moral level, was actually appeased in a gradual manner. Appeasement started with the end of the era of homogeneous governments and the emergence of governing coalitions after the first world war. After an accumulation of partial, often unwritten compromises, an overall settlement was reached with the 1958 schools pact. In certain respects, the way of dealing with class conflict has run through a similar evolution. The instalment of purely voluntary, mainly private social insurance mechanisms and the development of sectorial collective bargaining systems finally lead to a single system of compulsory social insurance and the installing of an single collective bargaining system of the neo-corporatist type, covering the whole of sectors of professional life. Here, the social pact of 1944 confirmed a gradual development and gave it a certain consistency. In both cases the emergence of parallel decision making organisms has proved very important. In both cases as well, the degree of institutionalisation of conflict matter is relatively high: it was obvious for all who was able to act as the legitimate representatives of the different interests involved. As such, the loyalty structure of the pillars or of their composing organisations could fully apply and muzzle the actual or potential opposition forces who might not be willing to accept the different compromises.

In linguistic matters, things proved more complicated. None of the three major pillars could reasonably claim to represent one of the communities involved. Furthermore, the competition by linguistic parties, present since the first world war, but particularly important in the 1960ies and the 1970ies, added unusual parameters to the
problem. It must be mentioned that these linguistic parties openly attacked the legitimacy of the traditional parties and the pillarised power structures around them. As such, discipline mechanisms functioning reasonably well on other matters, proved far less efficient. Furthermore, the prima facie impression of a confrontation between two opposite camps could be considered as not particularly fit for consociational mechanisms. This can probably explain in part both why linguistic problems had quite a destabilising effect and why step by step state reform occurred relatively late and proved a difficult job by any standard. Nevertheless, appeasement mechanisms eventually did work in the consociationalist sense. There are several elements at stake here.

First of all, ‘communitary’ confrontation is not solely a dichotomy between Dutch speaking people and French speaking people. The combination of social inferiority or frustrated middle class aspirations on the one hand and the belonging to the Dutch speaking linguistic entity on the other clearly helped to crystallise a Flemish national identification as opposed to the francophones, an identification which is perceived to be relatively strong by outsiders. However, this identification does not seem to be change-proof at all. For the Brussels Flemings today for instance, it is definitely loosening part of its evident nature. Things are even more complicated on the francophone side. There, identifications as a Walloon or as a francophone are not at all coinciding, quite on the contrary. Identifications occurred much later. Post war Walloon consciousness with its outspoken social and economic motivations always possessed an undertone of distrust against the central power of Brussels, regardless of the linguistic features of that central power. For that reason, the Wallo-Brux francophone alliance has always proved far less easy going than some would have liked.

This problem of identity accounts certainly for the Brussels case, where communities are not divided by clear borders, but where multiple grey zones have been and still are present. We can say indeed that nation-linked identifications are not at all self-evident. Indeed, national identifications in Belgium or in Brussels are not at all homogeneous and are furthermore crosscut by identifications of an ideological nature, as embodied by the classical pillars. In this sense, the traditional parties finally succeeded to keep hold of the situation in linguistic and ‘communitary’ matters as well and proved able to apply typically consociational techniques. The Brussels case is definitely a crafty example of such a type of compromise. The papers about the Brussels institutional model will show the way it mirrors the minority-majority relations on the federal level, how autonomy is granted to the communities within the of Brussels-Capital, in what way consensus functions on the executive level of the Region and how bi-‘communitary’ matters are subject to the veto power of the Flemish minority. All the known elements of technicality, elimination of debate on large principles, ideological vagueness and judicial complexity, discretion, subsidiarity, consensus seeking etc. are largely present here.

In this respect, the solutions advanced for Brussels do fit in the more general features of the Belgian political culture. One can evaluate this ‘quality’ from a positive angle, noting that it succeeded up to a certain extent to smoothen co-existence in
what Michael Romann correctly appreciated as a mild case of a divided city. On the other hand, one could state just as well that state reform in the case of Brussels mainly provided a solution for problems essentially belonging to the past, which does not necessarily contain the required features to tackle the problems of the future. The Brussels model rests upon the paradigm of the presence, the confrontation, the co-existence or the intermingling of two hypothetical communities, Flemings and francophones. This paradigm does not account for the profound changes of the ‘ethnic’ map of Brussels, where a large immigrated community has come to live in the last decades. Is it very likely that their presence will be accounted for by the model in any other way than a mere articulation of their presence and interests through the channels of the bi-‘communitarian’ paradigm? One can doubt that it is. In this respect, it is quite probable that in a not too distant future it will show one of the other features of Belgian consociationalism, that is its tendency to ‘freeze’, or to ‘reify’ if you will, a compromise model based on parameters which will sooner or later become outdated by social and political reality. One could say that the Brussels model already carries some germs of this phenomenon. It surely is an element to be accounted for by anyone wishing to use it as example.

3. Next year in Jerusalem?

Clearly, one ought to be extremely cautious while analysing the Israeli/Palestinian setting from the pillarisation/consociationalism angle. Indeed, this perspective seems very tempting, if only because the morphological appearance of some of the major political actors in Israel in the past (e.g. the Mapai-linked network with Histadruth as its core organisation) or in the present (as religious parties linked with extensive communal networks gain importance). Even the organisational features of the PLO lend themselves to this kind of comparison. As a matter of fact, more than one author has used this kind of conceptualising for Palestine/Israel, sometimes in a rather original fashion, like the political scientist Mitchell Cohen who tried to conceptualise Jewish-Arab divisions (mainly at the time of the Yishuv) by a kind of ‘double’ vertical pluralism. Nevertheless, the theoretical construct only has a limited applicability for Israeli polity. This point is clarified by the rightly authoritative book of Sammy Smooha, introducing the far more efficient concept of ‘structural pluralism’. Whereas vertical pluralism in its Belgian version implies that the more or less segregated (sub)cultures have an equal access to the political sphere, structural pluralism as one finds it in Israel indicates at least a similar segregation between the (sub)cultures, but stresses the inequality of their political participation. Smooha correctly points to this important difference mainly in order to acknowledge the power disparities weakening the position of Israeli Arabs. Obviously, the conflict potentiality of the latter type of system is much larger. Likewise, its receptiveness for a consociational approach is smaller. Nonetheless, Smooha and others identify one political conflict where consociationalism actually seems to have become the main style of decision making, i.e. the religious cleavage. The religious status quo, supported by autonomy granting on a millet-like basis with significant state funding
for different cults, is generally considered as a more or less successful solution. According to Smooha, more then one of the compromises upon religion would better be classified as pseudo-consociational - indeed, one might wonder what is so consociational about standards imposed upon a non-religious majority by a religious minority - but this does not affect the overall conclusion that they helped to avoid major confrontations around the issue, at least until today.

As such, it is not at all surprising that this religious consociationalism has been advanced more than once as a model for the administration of the old city of Jerusalem, which would be combined with a kind of self rule for the Arab neighbourhoods in a more widely defined eastern part of the city, Israeli competence remaining intact for all Jewish quarters, irrespective of their location in a Greater Jerusalem. Geographers like Jan De Jong have clearly shown that these models would eventually confirm the fragmentation of Palestinian presence in Jerusalem (just the way it is done in the territories by the way) and thus preserve Israeli hegemony over the city. This would furthermore allow Israeli government to keep Jerusalem at the centre of the global settlements network of the West Bank. If this model seems to have some chances to get a certain translation on the ground, there is of course nothing consociational about it. It simply reflects the existing power disparities. Scholars must be vigilant in this respect. Vertical pluralism and consociationalist theory might well be misused as an academic legitimisation of sheer dominance. It would not be the first time, by the way. About ten years ago, Lijphart's well meant proposals for a consociational solution for South Africa was gladly deformed and exploited by apartheid-supporters in order to justify the Bantustan-system. Critics of the ongoing 'peace process' - Edward Said is their best known representative - precisely object to Oslo and its sequels that they risk to leave the Palestinians with nothing more than this kind of territorial fragmentation, be it with internal autonomy. If so, a justification by dint of a pseudo-consociationalist theory could indeed turn out to be a most welcome intellectual gift for all those who refuse genuine Palestinian self-determination. Caution is definitely the message.

Of course, this does not imply that a consociationalist solution must be dismissed for Jerusalem, but it has to be clear that this can only come about if a number of conditions are fulfilled. Needless to say that factors generating consociationalist attitudes are not really at hand. One party obviously is by far the strongest one; there is no consociationalist tradition at all in Israeli-Palestinian relationships (on the contrary: the jabotinskyan spectre still haunts around); there are hardly any crosscutting cleavages yet; problem solving capacities are fairly low in the Palestinian leadership; finally, serious doubts are to be advanced concerning the overall will of the Nethanyahu government to reach any compromise worth that name. Consociationalism rests upon a formal equality of the 'partners', even if their bargaining power differs considerably. Consequently, it is hardly imaginable that a stable solution for Jerusalem (and for the whole of the conflict of course) can ever come about if statehood remains denied to the Palestinians, even if the actual Palestinian leadership finally accepts a permanently subaltern position: its already vulnerable legitimacy will vanish and any agreement it signs will be of no value. On
the other hand, a stiff Palestinian refusal of further negotiation is just as sterile. If Israeli expansionist strategy towards Jerusalem is more or less clear, then the Palestinian counter-strategy for al-Quds is hardly elaborated. Propositions have been advanced to abandon the non-participation stance and to run for elections for the Jerusalem municipality with an Arab list. Critics like Said would dismiss this option as eventually collaborationist, but I am not so sure that this scenario is unavoidable. Electoral participation is not necessarily equal to capitulation: the case of Flemish nationalism shows that it can constitute a means for effective political struggle just as well. In the Jerusalem case electoral participation could at least be a part of a defensive strategy against the Israeli policy of imposing facts. In the better case, it could help to elaborate the foundations of a joint political system for the city, upon which consociational solutions could be built in the future.

To a certain extent, this defensive strategy can be inspired by the Brussels case or more precisely by way the Flemings coped with it. Why did the Flemish politicians accept the symbolically charged foundation of a Brussels Region, conceding as such to a ‘loss’ of territory and to a permanent minority status for the Brussels Flemings? Definitely, the constitutionally guaranteed mechanisms of minority protection were very important in this respect, but that does not exhaust the explanations. It was just as important that Flanders’ territorial integrity could no longer be menaced by the so-called Brussels ‘oil-spill’: the fixing of the Brussels boundaries and the restriction of the ‘facilités’-regime to those peripheral municipalities who already possessed it were essential for the safeguarding of a unilingual Flanders. Although the Flemings possessed considerable bargaining power on the federal level (even if they were in a minority position in the capital itself), they nevertheless adopted a mainly defensive strategy. If we transpose this perspective, Palestinians do not only need to demand serious minority protection, autonomy granting and a more or less satisfactory power/sovereignty sharing system within the Jerusalem borders. Palestinians also have an overall interest in a restrictive definition of the city boundaries as such, so as to stop a Jerusalem ‘oil-spill’ potentially encompassing territory for which they aspire to full sovereignty. Of course, the current political setting in Israel leave no chance to options like these. It should be clear however that a ‘Belgian’ type of solution for this core problem of the Israeli-Palestinian conflict will have to be supported by this kind of guarantees for the weaker party. If these are refused, a major pathway towards peaceful co-existence will remain out of reach.

Notes


2 As Stein Rakkan stated, the 'corporate' channel must be linked to an 'electoral' channel. See: Rakkan, S. 1977. 'Towards a Generalised Concept of Verzuiling: A Preliminary Note', in Political Studies, XXV, 4: 563-570.


6 This element was e.g. stressed by: Damme, D. van. 1983. 'Verzuiling, pacificatie en klassenstrijd', in Vlaams Marxistisch Tijdschrift, XVII, 2: 37-53.

7 On the unequal institutionalisation of the different cleavages, see: Billiet, J. 1983.: 434-435.


13 Most authors refer to the conflict between religious and non-religious Jews, but their argument clearly indicates that they include other religious communities in their analysis.


17 Concerning the conditions favouring consociationalism, see: Lijphart, A. 1974: 79-85.
1. The principles of pacification

There is a type of decision-making that is mostly referred to as “pacification” or “consociationalism”. It has been developed, according mainly to Lijphart, in countries (or political systems in general) where a more classical 'Westminster' type of majority decision-making would have far-reaching negative effects on the democratic stability of the system. This is the case in societies which are deeply divided along cultural cleavages, like for instance caused by religion or language. Using the Westminster type of decision-making, in which the élites compete for power, and in which the winner of the race takes all the power, is believed to be disruptive when the winner defends and implements (i.e. imposes) a very different culture. Cultural minorities can never dream of becoming a majority one day (unlike purely political-opinion minorities), and therefore will not support the (democratic) system. It will then collapse as a result of lack of legitimacy.

Yet some very divided countries seem to have a fairly stable regime. Lijphart refers to Switzerland, the Netherlands, Austria and Belgium. They are able to survive or better to avoid the potential instability or collapse of the regime, by developing this “pacification” type of decision-making. In these systems the elite is very much aware of the fact that an ongoing conflictual attitude is disruptive and will produce a result in which everybody loses. Therefore they adopt a more 'prudent' leadership style, oriented not only at mobilising the sub-cultural differences, but also at bridging the gap between the differences. They bridge this gap at the elite level, since in the society the subgroups are clearly different and thus (eventually also geographically) separated.

There are three very important features of a “pacification” type democracy. We will discuss them here, and immediately show where and to what extent they are used in the current institutions of the Brussels Region within the Belgium federation. The Region of Brussels-Capital is, just like the Belgian federation in general, a textbook example of this type of democratic decision-making.

The first and most important feature is power sharing. This means that the élites of all the relevant subgroups tend to decide together on all the major issues, and especially on the issues in which intercultural conflict is involved. This feature is the perfect negation of the Westminster principle of the winner takes it all! The power sharing can be organised in a formal or an informal way, it can be permanent or only for major problems.

A second feature, which is in fact only a reinforcement of the first one, is veto power for each relevant subgroup. If each group can veto a proposal, only proposals
on which there is full agreement can be implemented. One single group can never move alone.

The power sharing and the veto power are very obvious in the Brussels institutions. The regional government has to be composed of five ministers. Each language group has the right to nominate two of them, while the prime minister needs the approval of a majority of both linguistic groups in the regional parliament. Furthermore the regional government decides by consensus. The government never votes. This means that for all the matters relating to the Region, the two linguistic groups need to co-operate. Without co-operation, there is no decision at all. This produces a strong built-in institutional pressure to reduce the potential conflicts and to seek for an acceptable compromise.

Yet for the regional matters (economy, public works, public transport, territorial management, environment, waste policy, ...), there is little chance that the political conflicts concentrate on the linguistic differences. The built-in obligation to share power and to govern together is obviously a strong protection for the minority language, but on issues in which there are no or hardly any linguistic tensions.

Much more important here is the next basic feature of 'pacification' democracy: the granting of autonomy. This is a very typical mode of decision-making for matters in which compromise is not possible. This is exactly the case for purely cultural (in casu linguistic) matters. The obligation to find consensus is often not able to produce an outcome that is acceptable for all the subgroups. There is (often) no middle way compromise for matters concerning language or religion.

In stead of having one group (the majority) win power and impose its culture on the minority, this characteristic of pacification democracy consists in reaching at least an agreement on the fact that no substantial compromise agreement is possible, and that therefore the different (cultural) views on how society should be organised should all exist next to each other. Except for ongoing conflict without any solution, this is then the only solution. In stead of having one language be imposed on the other, the two groups receive the right to organise for themselves, in an autonomous way, the matters for which language is important. In the Belgian institutions these matters are the competencies of the Communities (education, culture, social welfare). In Brussels, the Communities received autonomy. They both have their own parliament (the language group in the Regional parliament) and their own government (the regional ministers belonging to that language group). There is no need for any debate between the Communities about the language of education in the Region of Brussels-Capital, because both Communities organise their own education in their own language. The only political agreement needed is the basic agreement to accept that this is an acceptable solution.

The very special element in Brussels is that the autonomous Community authorities have no territory. They are two governing bodies on one single territory. One can call this a non-territorial federalism. Note that federalism, the granting of autonomy to sub-states, is also a pacification-type solution. It was indeed the way in which the Belgian federation in general was created: by gradually taking out of the
central state competencies in those matters on which the two groups could not agree anymore.

2. The conditions of pacification

It is not always easy and not always possible to get out of the sub-cultural conflict deadlock by using the pacification techniques. Some conditions need to be present. They can be considered to be facilitators of this type of decision making. Many conditions can be discussed, but we will look here at three very important elements.

In the first place, it is generally accepted that pacification does not work when there are only two groups. That would mean that one group is and has a majority, and will not be very eager to give away the power that it can legitimately seize within the rules of majority democracy. That explains (together with other factors) the failure of federalism and/or consociationalism in countries and regions like Cyprus, Northern Ireland or Canada. At first sight, this condition is not met in Brussels, where there are only two groups, with one of them having a very large majority.

Yet the condition for the functioning of the pacification in Brussels is broader, and includes the complete Belgian context. In Belgium there are the same two language groups, but there the Dutch-speaking group is the majority group, that has given away its majority power to enter institutions in which power sharing and veto power are present. The bipolar problem of Brussels could only be solved because it was treated as a balancing counterpart for the Belgian solution as a whole. The fundamental condition for the functioning of pacification in Brussels therefore is the presence of Belgium. Only within the Belgian context the Brussels solution of pacification between a majority and a minority is possible. Belgium is a necessary condition for the Brussels model.

A second important condition is the absence of socio-economic differences that coincide with the cultural differences. Economical and social cleavages should not reinforce each other. That would mean that any conflict is interpreted as a cultural conflict, and that would boost the pressure to non-controllable levels. This is the danger of for instance the new South-African republic, and is one of the explaining factors for the failing of the Czechoslovak federation. In Belgium the federation as a whole feels the pressure coming from the fact that the Flemish Region is economically stronger than the Walloon Region, and from the resulting fact that both sides advocate different federal economic policies. In Brussels however this does not play a role. The economical differences between the languages used to be very clear (the users of French being the higher classes), but have disappeared. The two groups do not differ significantly in their socio-economic composition, and therefore do not differ in their positions on economic policy. That is an important facilitator of the pacification.

A third important facilitating condition, is the elite behaviour. Élites should be aware of the fact that a conflictual attitude does not pay in the long run. Or in other words, they should know (eventually through experience) that a prudent leadership style allows to produce solutions that are not the ideal solutions, but that are still
better than a complete deadlock. Today this attitude is present amongst most political élites in Brussels. That is to a certain extent the result of the young age of the institutions. The political élites do remember the situation of and in Brussels at the time when there were no institutions for the region - before 1989 - at the time when the linguistic tensions were very high (1960 to 1980). One can expect that newer political generations will forget this experience, and will try to be more conflictual - which is the very nature of politics. This is especially to be expected at the French-speaking side, since they constitute a very clear majority, and have no institutional rights to use this majority. The same will be seen (and can already be seen) at the Flemish side within the Belgian federation as a whole.
IS THERE A COMMON JERUSALEM POLITICAL CULTURE?

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Introduction

Great cities are well known for commanding strong identification and loyalty on the part of their residents. In ancient times, when cities were also states, these cultural loyalties were often linked to political loyalty. In modern times, fundamental political loyalties have been transferred to elsewhere, but cultural loyalties often remain. The ties of New Yorkers to New York, Parisians to Paris, Florentines to Florence and Calcuttans to Calcutta are not particularly tied to political loyalty although in those cases, at least there is no incompatibility between political and civic loyalty. This is not the case with Jerusalem.

Jerusalem long has commanded very strong civic identification and loyalty on the part of its inhabitants even though civic loyalty has had to survive many changes in the political loyalties required of its citizens. Since 1948, this problem has been compounded by the fact that Jerusalem's residents have had two competing, at times conflicting, political loyalties, Israeli and Jordanian, and more recently, a new Palestinian political loyalty. The issue of political loyalty has been a sore point, if not a central feature, of the Israeli/Palestinian conflict, leading to questions that need be raised with regard to civic loyalties, and, beyond that, political culture.

Political culture can be understood as a dimension of general culture that is also an independent variable in its effects on political life and not merely a residual category. It can be defined as a group's deeply rooted pattern of orientations to political action. Political culture, like all culture, changes. It is very slow in its changing and cannot easily be changed by conscious manipulation. In that respect, it must be distinguished from political style, which, like all styles, is superficial and can be altered to a larger extent, even though it represents the expression of something deeper.

It is important not to confuse political style with political culture, which involves subconscious attitudes and behaviour as much as conscious orientations or response patterns. In situations where there may be substantial difference in general culture, there are often certain elements of political culture that provide a basis for communication and sharing among groups. Good examples of that can be found in various political situations around the world where certain groups seem to find a common language, despite their difference; while others, which may be similar in certain ways, are in constant conflict. There are some questions of underlying political culture that may influence in both directions. For example, in those parts of the United States where settlers of Puritan stock were later joined by settlers of Scandinavian stock, both political cultures were basically alike or harmonious so that they were able to forge a common state policy together, with relatively little difficulty and despite the differences in their respective general cultures. Naturally there was
competition for office of chairman between the groups, but that competition did not
extend to more fundamental issues since each group assumed that whoever held
office, they would pursue patterns of government acceptable to the other. This was
quite unlike the situation in which the Irish settled among descendants of the Puritans.
While there were strong similarities between their two general cultures, their cultures
clashed and each group soon perceived that loss of office to the other meant
fundamental changes in the ways of government. Even though both were committed
to the United States, and ultimately to living together, it took four or five generations
before there was even a superficial melding of their respective political cultures.

This issue has direct bearing on our case in the sense that whatever the
differences in general culture between Jews and Arabs may be, they may not preclude
commonalities in political culture. Those commonalities may serve to bring the two
peoples together or to further exacerbate tensions among them, precisely because of
their similarity.

Some people see common political culture only in common political activity
such as joint (Arab-Jews) political parties, common celebrations, and the like. But the
very things that are common in the political culture may prevent joint activities of
those kinds in all fields. In that case, shared political cultural elements may serve as
barriers rather than as a unifying force. In other ways, the political culture may be
serving, if not a unifying, at least an adjusting force, keeping the conflict within
bounds.

Why this study? The resolution of the Jerusalem question will, in the last
analysis, rely upon political negotiation and decision making based upon the
expectations, aspirations, and rural situations by both parties. Understanding common
political cultural patterns could possibly be of assistance in reaching that resolution.

1. Commonalities

This paper can only begin to deal with these questions. Preliminary research
suggests that direct attempts to obtain the answers with regard to political culture are
very much entangled with the issues of political loyalty and hence the strands are not
easily separable, nor best uncovered by direct questioning. A subtle methodology is
required.

Whatever the entanglements, one thing is clear of all Jerusalemites, and that is
their common commitment to Jerusalem as their city. It would not be unfair to view
their commitment to Jerusalem the city as among the most powerful in the world
today. Indeed, it is one of the factors that exacerbates the conflict. There are
territories in dispute between the two peoples that carry with them minimal emotional
attachment, obviously within the context in which the entire territory of what is
referred to as the Holy Land evokes emotional attachment. Some have the additional
attachment that comes from being considered strategic, in one way or another. Still
others have symbolic associations attached to them, but that symbolism has very little
that can quickly tie it to place. Jerusalem, on the other hand, has all those elements;
strategic, symbolic and concrete sites and ties.
When it comes to civic loyalty and feeling, the vast majority of Jerusalemites, whatever the people or their persuasion, have very strong feelings and commitment, each group, for its own reasons, but the result in the end is the same. We can compose a list of the possible commonalities in question. While it must be labelled tentative, observation suggests its accuracy:

1) Identification with Jerusalem, qua Jerusalem.
2) Each group has a sense of having been deprived of their rights or aspirations.
3) Religious attitudes toward the city.
4) Desires for political and social separation.
5) National ambitions.
6) Use of informal accommodation practices.
7) Concern for the character of the city.

Some of these commonalities can serve as the basis for communication and sharing, while others exacerbate potential and actual conflicts.

2. Identification with Jerusalem

We have already suggested that in the civic realm all groups of Jerusalemites are characterised by their strong civic identification with and loyalty to Jerusalem. This identification with Jerusalem is the founding stone for any shared political culture in the city. It could be the starting point for our investigation. There is a special character to the identification with Jerusalem as well, that rests on strong religious, historic and familial connections. Although not actually symmetrical, it is sufficient for both peoples that they are culturally similar. Both Arabs and Jews identify the old families that have been in Jerusalem for centuries as the nuclei of their communities, albeit with different consequences in the present. Those old families are symbolic of the tangibility of the attachment of both peoples to the city.

Arabs speak of families that have been in the city for as many as fourteen hundred years, that is, from the time of the Muslim conquest, a figure which may or may not be a mythic one. Jews do not trace the continuous residence of any families back significantly more than 500 years, but they like to refer to the fact that the Eliachar family has been in Jerusalem continuously since 1485. Seven other families in the city claim to have come to Jerusalem directly from Spain when expelled from that country in 1492, which is perhaps also mythic. The Vaad Haedah Ha Sephardit, the Sephardic Community Council which had been the governing body for Jerusalem's Jews under Ottoman rule, dates its founding to Nachmanides re-establishment of a Jewish community in Jerusalem in 1268, after the Mongol invasions had left only two Jewish families in the city. At that time, he brought additional Jewish families from Shechem, along with a Torah scroll.

The old Arab families are reckoned to be those whose property was formally held by the Muslim Waqf, for purposes of protection against Ottoman taxation. This is still considered to be property of the families in question, as well as to define what
the old families are and who the major property owners in the city are. These old families were politically very influential, at least until the Six Day War. The equivalent families in Jewish Jerusalem can also be traced through their property holdings. They are the ones that own almost all of the city's central business district and downtown lands. They maintained their very strong influence in the life of the city until the collapse of Ottoman rule in World War I. In the 1920's they withdrew from public affairs in the face of the rise of Zionism, and now remain present but not immediately visible in the city's public life. Still, those of both communities whose history of residence in the city is more recent, seek vicarious standing through identification with their respective old families.

Within the two peoples that comprise the major divisions in the city's population we can identify a number of continuing or permanent subdivisions. Among the Palestinians, we can identify Muslims, the various Christian communities that share Arab nationality, and the Armenians, that is to say Christians of Armenian nationality. Among the Jewish population there are ultra-Orthodox Jews, religious Zionists, a secular intelligentsia, and traditional Jews who do not fit into any of the other three camps.

What all have in common is their identification with the city. That identification may lead to contradictory demands. This probably refuels the demand among many - if not most - Jews for exclusive political control in the city, while most Arabs seem to require political control over their part of the city to satisfy their identification needs. At the same time, it also generates possibilities for compromise. For example, very few Jews do not see the city as bicultural, and are perfectly willing to see Jerusalem's Arab population have the cultural autonomy that they might want, recognising their presence in the city as no less legitimate than that of the Jews. By the same token, the apparently greater willingness of Jerusalem's Arabs to reach some kind of compromise solution might also be tied to this identification with the city and recognition of the fact that the Jews are, have been, and will be a continuing presence in it.

3. Each group has a sense of having been deprived of their rights or aspirations

Each of the key peoples and probably most of their subdivisions have a sense that they have been deprived of their full rights or aspirations vis-à-vis each other for what concerns both Jerusalem, and the Holy Land as a whole. The particular nature of that sense of deprivation is specific for each group. For the Jews, Jewish history places Jerusalem at the geographic centre of Jewish space, and the Temple Mount at the heart of Jerusalem, while at the same time, Jews had been prevented from exercising political sovereignty over Jerusalem for over 2000 years and are still formally denied recognition of their sovereignty over the city by the nations. For many more traditional and observant Jews, the fact that the Temple Mount remains in Muslim hands is a serious deprivation. For Muslim Arabs, Islam views Jerusalem as its third holiest city, and for Christian Arabs it has all the Christian investiture of holiness. Both groups, as Arabs or Palestinians feel deprived of rule in Jerusalem as a result of the Six Day War, and as Palestinians as a result of even earlier occupations. That
sense of deprivation is part of the new Palestinian national myth. These views about Jerusalem are tied to a strong sense of national deprivation felt by both peoples; the Jews as a historic and religious deprivation and the Palestinians as a national deprivation.

4. Religious attitudes toward the city

As suggested in the previous paragraph, these attitudes of deprivation, while not symmetrical, are the shapers of much of the sense of attachment and they are strongly rooted within the religious commitments or background of all three faiths. Religious beliefs are perhaps the strongest of all human beliefs, the ones least amenable to change and most demanding of coherent and consistent response. While religious feelings about Jerusalem among the two peoples are not symmetrical, nor are they symmetrical with regard to the three faiths, since Jerusalem occupies a much higher place in Jewish religion than it does for either Christianity or Islam. But they are real feelings for all three.

5. Desire for political and social separation

Vis-à-vis each other, both peoples have a basic desire for separation, albeit under what each perceives as optimal conditions for itself. Today there is also a certain asymmetry here. The Palestinians probably desire more separation, especially in the political realm, as part of the quest for a Palestinian identity although they have begun to reconcile themselves to the reality of the Jewish presence in some ways. The Jews have reconciled themselves with being unable to achieve their optimal conditions of complete separation and are willing to sacrifice them for political control.

6. National ambitions

In this respect, both peoples have strong national ambitions that are in conflict over Jerusalem. Both see those ambitions as simple matters of justice that end long deprivation and injustice. If they could, no doubt each would like the other to disappear. But both have moved much closer to the realisation that neither will, and thus they must find some way to live together. This is a general phenomenon with regard to the Israeli-Palestinian conflict. In Jerusalem, it is compounded by a recognition of the necessity to live together within the same city. Research on the Israeli-Palestinian conflict in Jerusalem suggests that the Palestinian Jerusalemites are perhaps the most willing to compromise of all Palestinians. This may be explained by a number of factors, ranging from the role of proximity in the same city leading to a recognition of reality on the Palestinians' part, to unwillingness to give up the personal benefits received as a result of being under Israeli rule, to larger questions of political culture. The matter bears further investigation.
7. Use of informal accommodation practices

At the same time, because both peoples have come to recognise the reality in which they are located, they have developed informal accommodation practices. In general, this is a not unknown dimension of Middle Eastern Political culture which requires that formalities be observed for the sake of maintenance of everyone's honour, but which allows informal accommodations within the framework of those formalities. This is particularly true in Jerusalem, where shared civic sentiments of attachment to the city have made those accommodations even more necessary if life is to continue. The variety of these accommodations has been discussed elsewhere in this project. The fact is that, whatever their sentiments, all but a few extremists accept the necessity for these accommodation practices de facto, although not necessarily de jure. This is not at all reflected in the either sides' rhetoric. It is particularly absent from the Palestinian rhetoric, since Palestinian rhetoric focuses on the deprivations of what they consider the Israeli occupation and what they perceive as their second class status in a city in which they have been historically resident for centuries. Jews are less likely to use that rhetoric with regard to their informal accommodations since they do not feel immediately deprived. The Jews who use it are those few who are active Jewish missionaries, or are those active on behalf of the Palestinians. This is perhaps the case where rhetoric and reality are most in conflict.

8. Concern for the character of the city

In a sense, this brings us full circle since those accommodation practices go beyond the accommodations that have been developed by the rest of the country, principally because of the joint concern of all segments of the population for the character of the city and even for the peace of the city. This concern for the character and peace of the city is directly tied to the civic pride that embraces the city's inhabitants. Not all of these political cultural elements are unifying. Some are polarising. But, they all testify to the existence of shared political culture to some extent, whatever its consequences. As we know political culture can have a variety of consequences, what is shared can be disruptive. If so, it must be dealt with. Nevertheless, understanding this political culture is a first step toward finding a way to reach an effective accommodation between the peoples involved, the groups into which they are divided, and the city which they all love. To suggest that the two peoples in Jerusalem share elements of a common political culture, does not require us to ignore the political cultural differences that separate them. To mention only two; both communities have old families that have dominated civic and whatever political life was open to their community for generations. In the past, the old Sephardic elite has in many ways resembled the old Muslim Arab elite. Both were well rooted within Middle Eastern culture in which lineage and extended families played a major role in determining position in society. The Sephardic families began to lose their dominant leadership role in the last half of the 19th century, and completely lost it after the British conquest of Palestine and the transfer of leadership to the Zionist movement.
immediately after World War I. The Arab family elites continued to hold power until the latter half of the 20th century, and they are only now losing their special standing, approximately a century after the transformation in Jewish Jerusalem. So, too, the nature of elite vs. democratic control is substantially different among the two people. These are only two of the more manifest political cultural differences between the two communities worth of noting.

A third difference is in the extent of the Hamulah system. Among the Palestinians, Hamulot are both strong and very extensive, with perhaps up to 5000 members that recognise the active kinship ties and the obligations that flow from them into some. There are some characteristics among Israeli Jews that are colloquially referred to as marking Hamulot and not only among Jews from Arab countries. But these are greatly weakened and much less in number than in the Palestinian Arab sector as a result of the inroads made upon them caused by modernity. For the Palestinians, Hamulah identity exceeded national identity until recently. Whereas for Jews, even in the past when Hamulot was stronger, national identity has been primal for thousands of years.

A fourth difference is the definition of the feeling of helplessness. More than a hundred years ago, before the rise of Zionism, it was possible to talk about the Jews feeling helpless in political matters, although it is questionable as to whether they felt as helpless as Palestinians seem to feel today. In any case, Zionism and other Jewish national movements eliminated that feeling of helplessness in the course of several generations. For the Palestinians, however, their sense of helplessness seems to have increased because their political consciousness has been raised at a time when their political situation has not seemed to be improving, perhaps even declining.

List of interviewees whose answers informed this article

1) Gershon Baskin, Co-director of IPCRI
2) Dr. Robin Twite
3) Zakaria AlQaq, Co-director of IPCRI
4) Hana Siniora, journalist
5) Khalil Tufakaji, Arab Studies Society
6) Dr. Meron Bendinisti, former Deputy Mayor of Jerusalem
7) Nadav Shelef
PALESTINIAN POLITICAL CULTURE, CIVIC SOCIETY

AND THE CONCEPT OF CITIZENSHIP

Manuel Hassassian (IPCRI)

Introduction

Palestinian cultural expression has been organically interwoven with the political development and realities, and along their political struggle, Palestinians succeeded in embodying within their national ethos a culture of resistance and a momentum of socio-political transformation. It is not surprising, that Palestinians have defined democracy in the context of human rights, civil rights and self-determination, and more importantly, they have contrived in developing their shattered socio-economic infrastructure alongside the infusion of dramatic changes in their educational system.

Undoubtedly, the Intifada has been instrumental in inducing the Palestinians towards institution-building, thus expanding the democratisation process among the grassroots of the Palestinian community through the growing number of and membership in trade Unions, professional associations, women and youth organisations and movements; and the like. A great number of Palestinians regarded their active participation in these organisations as a major path to defy Israeli occupation and establish democratic institutions. Consequently, the concept of democracy became alongside the ideas of national solidarity and struggle against occupation a major ethos among Palestinians. And throughout the 1980's, democracy was perceived as the basis of Palestinian solidarity, popular mobilisation and steadfastness (Sumud). By and large, this democratic process gained momentum in culmination to substructural changes, the expansion of education and the growing political awareness among the lower strata of Palestinians, urban and rural alike.

The lessons of the past five decades or so-indeed, the lessons of this century marked by conquest, occupation and colonisation - have taught the Palestinians that unless democratic practices are implemented at every level of daily life, in homes, in schools, offices and bureaus, and factories, the new state of Palestine will emerge as a replica of the surrounding authoritarian Arab regimes. However, a large number of Palestinian intellectuals including proponents of the fundamentalist wing of Palestinian politics, consider political pluralism and freedom to be basic ingredients of the future Palestinian polity. Thus, a multi party system is upheld as the most desirable model.

It is evident today that Palestinians have already embarked on the process of state-formation in an attempt to preserve the embryonic civil society that emerged during the last decades of Israeli occupation. In fact, the process of social transformation in Palestinian society was highly noted during the Intifada period where the patriarchal authority prevalent in Palestinian society was directly challenged. And the challenge to the traditional authority of the Palestinian family by
the youth and to a certain degree by women, was made direct by claims for a higher authority consecrated by political commitments to their political groups and therefore to the national cause, according to Palestinian sociologist Salim Tamari.

It is the aim of this paper to scrutinise the development of Palestinian political culture in the context of democracy, civil society and citizenship, with special emphasis to be made on Palestinian Jerusalemites; and to what extent the latter's political culture, sub-culturally has been affected by Israeli democratic behaviour as embedded in its electoral process, and in addition, to what extent this has a direct impact on the overall process of democratisation among Palestinians.

1. Political culture, democracy and citizenship: preliminary remarks and definitions

Political culture has been defined as people's predominant beliefs, attitudes, values, ideals sentiments and evaluations about the political system of their country, and the role of the self in that system. Political culture is vibrant among democratic polities, which in turn, requires a distinctive set of political values and orientations from its responsible citizens that encompasses the following: tolerance, moderation, efficacy, civility and above all participation. However, political culture reflects three basic components in its orientation, defined as cognitive, affective and evaluational. And each component is complemented in a systematic way in defining the relationship of the citizens to their political system. Of course, this leads to an organic relationship that eventually shapes the political life of the citizens. It is therefore this nexus between the subjective dimensions of politics and the objective dimensions of political life, that moulds the political behaviour of the citizens in a polity.

It is important to note, that the relationship between political culture, citizenship and democracy dates back at least to the Greek classical political philosophers. Aristotle in particular, had been contributive to the theory of political culture in the context of moderation and tolerance, and had been very cautious from the dangers of political extremism and unfettered populism that have high resonance in current political events. However, contemporary political scientists like Almond, Verba, Dahl, Lipset and Inkeles identify moderation and accommodation to imply tolerance for opposing beliefs and ideologies and for socio-cultural differences more generally, pragmatism and flexibility. Pragmatism as identified by these thinkers facilitates the process of bargaining and compromise by rendering goals negotiable and opinions open to engagement.

This openness is conducive towards tolerance in seeking the ultimate truth. Thus pragmatism, constrains the function of ideology in polities and hence curbs the pitfalls of polarised conflict. Pragmatism generates objective and flexible goals committed to democratic procedural norms, which in turn, is considered to be a critical Poliito-cultural condition for democracy.

However, democratic culture embodies, flexibility, trust and openness, efficiency, tolerance of differences and ambiguities in a democratic polity. Democracy partly requires the participatory norms and values that come with the culture of
individualism and egalitarianism. Individualism legitimates competitiveness, while egalitarianism restricts authority from being oppressive and domineering. It is common belief, that stable democracy requires a belief in the legitimacy of democracy, and participation is the cardinal element of mass democratic culture.

It is worth mentioning, that socio-economic changes, civic mobilisation, institutional practices and historical experiences can incrementally modify predominant political values, cognition, attitudes and beliefs of a certain country. This would have an impact on the political leadership in its strategic calculations, political accommodations as well as its choice between constraints, which in turn would affect the political culture. Political culture as a dynamic phenomenon, is characterised by multi-facetedness and complexity which makes it potent in its effects on democracy. To succeed, however, a political powerful set of élites should be committed to it, along with great attention given to mass political culture.

Democracy and Citizenship are Western concepts now encouraged in all parts of the world, sometimes without paying heed to the existing and widely-varying socio-political situations throughout the World. Their promotion is due most commonly to a 'rose-coloured glasses' syndrome from which most Westerners suffer. Wholly Western styles of citizenship cannot possibly exist everywhere in the world, and when it is said that it exists in various regions, it does so only with flexibility in its definition and characteristics.

However, modern concepts of citizenship are far from being a recent invention, however, and have been modified and affected by many political philosophers over hundreds of years. What is the Western concept of citizenship and how did it develop to become what we know it as today? To appropriately analyse citizenship in a comprehensive manner, one must study three areas of the concept: 1) the rights and obligations attributed to citizens as members of the polity, 2) the determination of individual membership, and 3) the nature and shape of the polity itself.

A citizen, (or one who enjoys the privileges and rights of citizenship), in the West has certain basic ('inalienable') rights, one of which is to have a say in the political realm within his country. The West's definition of citizenship rests largely on the ability to participate in one's government and to affect, (albeit only en masse), the course and flow of their country's political waters. Participation in government remains as important today as when it was emphasised by Aristotle in the Politia. Aristotle, in his attempts to define the perfect or 'good' citizen, notes that he or she must be active in their government and take interest in political affairs. What distinguishes the citizen proper from all others is his participation in giving judgement and in holding office'. Although democracy as it exists today with its representatives would most likely be frowned upon by Aristotle, he still considered some of the more minor roles in government as participating and 'holding office' (i.e. membership to a jury). Even still, Aristotle found democracy to be a destabilising and inferior form of government. Aristotle goes on to note that citizenship entails both leading and following if one is to become a model citizen. Today, however, we can find a most similar definition of 'citizen' in modern American government text books: 'Citizenship
is an office, and, like other offices, it carries with it certain powers and responsibilities.

In addition to open participation in politics, a Western citizen deserves the right to speak out against their government's actions and disagree with the government when they so desire. This right is protected in the United States by the First Amendment of the Constitution. A citizen in the West can go on to expect protection by their government from both outside enemies and from their fellow human beings. The government forms a national defence to protect its citizens from foreign invasion, but also develops and enforces laws through which it maintains order within the state as well. 'Justice' and 'Due process' are then sought after and enter into the overall picture of Western society, much like they entered into Plato's equation of the just and ideal society in Republic. After much discussion and argument, it is concluded in The Republic that a successful and just society must have a balance of four cardinal virtues. Those virtues are: wisdom, courage, discipline, and justice. For a balance of these virtues to occur, however, each member of the society must have a balance of these virtues themselves. When they have achieved this, they become citizens in their society.

The Western citizen's overall rights to life, liberty, and property can also be seen in John Locke's Second Treatise of Government. In the Treatise, Locke notes that all human beings have a right to property in which they attain through their own labour. Modern political philosophies tend to mirror just such a concept and have close ties with other philosophies of John Locke as well.

Western citizens also have obligations in return to their nation, however. To live in the West is not solely a one-sided affair. To clarify, a Western citizen, in turn has obligations to his nation and government. He is expected to defend his nation in times of war and to voice his opinion through the casting of a ballot when elections are held; this he or she does among other obligations to the state.

Citizenship is most often attained in the West by birth in the granting country; a process known as 'jus soli'. This right of citizenship in the United States was established by the Fourteenth Amendment of the Constitution. Being born within a sovereign state's territory will grant you citizenship of that Western country, it is, however, not entirely difficult to gain citizenship by alternate means. In addition to 'jus soli', the Fourteenth Amendment also established that aliens to the United States could become citizens through 'naturalisation'. Today, with minor exceptions, non-enemy aliens over 18 who have been lawfully admitted for permanent residence and who have resided in the United States for at least five years and in a state for at least six months are eligible for naturalisation, which is finally conferred by a court. This brings to light another aspect of the concept of the Western citizenship. Citizenship entails membership to a legitimised nation or sovereign political entity with territory. In the West, citizenship is based not upon religious, ethnic or cultural ties so much so as it is based on the nation to which one pledges allegiance.

What is the condition of the polity which incubates and maintains Western citizenship? As we can see in the description of a Western citizen's rights, the only truly supportive style of government would be that of a democracy. When analysing
modern citizenship, we first recognise that to have a structure of citizenship which parallels Western formulas thereof, one must first have a democratic form of government from which to build a foundation upon. As stated earlier, one of the basic rights of citizenship in the West, is the ability to participate in one’s government. This is also a basic element of Western democracy and thus, we see in the West that citizenship and democracy are two inseparable entities. However, the Arab World today boosting of its 'Neo-patriarchy', justifies its democratic behaviour through liberalisation and the formation of nascent civil societies. It is imperative to shed lights on Arab political culture, citizenship, democracy and civil society.

2. Citizenship, civil society and democracy in the Arab world

The definition of citizenship, within the theoretical framework of contemporary Arab discourse and Middle Eastern politics digresses from the widespread Western derived interpretation of the term. Unlike the Middle East, the west has based the evolution of citizenship on, ‘... an expression of aspirations towards individual liberty and democracy,’ thus, the Western intellectual sees the need to specify the rights, roles, and obligations of the individual in society as essential, while the Middle Eastern definition has evolved in an ambiguous manner which is still presently maturing. The subsequent question to this line of argument is why hasn't the Arab world felt the overwhelming urge to detail the rights of its citizens?

As specified by Nazih Ayubi this is due to the generally accepted concept ascribed by Arab thinkers such as Louis ‘Awad and Kamal al-Haj, that the state and the individual are intrinsically connected. In addition, the assumption stems from the idea that the state is a tool of the people and inherently operates in such a way to satisfy their needs. Al-Haj goes even further in this interpretation, saying the ‘state alone can preserve the components of nationalism and enable the individual to experience freedom.’ Although the concept may seem somewhat alien to contemporary Western thought, the Middle Eastern interpretation is natural when viewing it in its historical and cultural context. Regionally, the people of the Middle East have always had a patriarchal relationship with its rulers. Cultural patterns also supported this father/child relationship in society as well. The continuation of this patriarchal system thus naturally continued even with the emanation of the modern nation-states in the region. The emergence of the modern state did not erode the idea that the ruler had paternal-like power to maintain order in society.

However, the rise of Arab nationalism in the late 19th century and its subsequent evolution in the 20th century has steadily made this point of view wear down. What is now left is a condition of neo-patriarchy in which the relationship between the government and the people is neither fully patriarchal or fully modern. Highlighting this transition are Arab intellectuals who express concern over the suppression of individual expression and participation. It is emphasised here, the distinction between the Western and Middle Eastern idea of expression and participation. Class and individual in the Middle East are often seen as one (reflecting socialist attitudes which equate the needs of the class as the only effective
representative of the individual, i.e., the needs of the masses). The evolution of Arab nationalism is attributed with emphasising these rights within the sphere of the social class. We see Muhammad Hasanayn Haykal and Clovis Maqsid talk about economic equity for the classes, witnessed by the growing demand for party representation in political discourse as evidenced by the creation of the Wafd party in Egypt, the Syrian Socialist Nationalist Party, and Al-'Ahali party in Iraq, and the call for participatory elections on a mass level among Arab intellectuals of the period as expressed in the ideas of progressive radical thinkers. The resultant effect on the states of the region, whether the state be a pluralist democracy or an autocratic regime is the presence of party representation and the use of elections, even if both are restricted.

While the class/group/party aspect of citizenship rights is realised even if not fully practised in the region, what is thus lacking is the 'human dimension' of citizenship. What specific actions are present or needed to protect human rights, the most basic of these being the right to life? Although virtually no specific basic human rights are enumerated in Arab discourse, the growing influence of civil society highlights the move toward distinctly defining the rights of the individual. The political and legal status of the judiciary has dramatically increased in significance in the 1980's and 90's by giving a viable platform to contest diverse ideas, safeguard human rights and cancel elections. For example, 'the Egyptian high constitutional court was able in 1990 to declare the elections law unconstitutional and to call for the dissolving the parliament.' Morocco and Algeria are also witnessing the expansion and increased autonomy of their judicial systems, although the Egyptian case is the most advanced. The politics of interest groups in the region also serves as evidence to the growing liberalisation among Middle Eastern countries.

Although not completely effective in autocratic regimes and monarchical governments, interests groups do set up precedents to implement or at least control the level of human rights violations. Ayubi says, '... a pact of sorts appeared... and although the level of violence remained significant, it may be developing into a more distinct consociational formula.'

The simple lack of definition on the question of citizenship is the major obstacle when trying to analyse the Middle Eastern interpretation of the term. Taken from different ideologies which encompass the ideas of liberal, socialist, and Marxist Arab intellectuals, one arrives at the conclusion that the major concept of citizenship is from an economic standpoint. While social and political factors of the definition are contingent on the views of various types of governments and regimes in the Middle Eastern region, economic freedom and equity for the individual serve as the major component of citizenship. Whereas, in the West, citizenship has meant the right to freedom of expression and equity in the social and political arena the Arab interpretation is limited to the economic front. Thus, the reader is led to interpret for him/herself whether economic freedom can be theoretically applied to political and social freedoms as well. One concludes with a quote by Albert Hourani to illustrate the point. 'There exists between members of a certain group a link so strong and important that they should form a political community, and that a government
possessing moral authority... expresses the will of that community and serves its interests.

In the Arab world, democracy in the Western sense of the word does not exist. Most countries in the Middle East are run by autocratic or dictatorship regimes, with a powerful ruler flanked by a stalwart military. These dictatorships are kept in place through might and blood, i.e. a strong army and the practice of nepotism. Since the overall belief in the Arab world is that the 'ruler knows best' for the masses, the majority of Arabs show little or no resistance to their autocratic leaders.

Even though countries such as Iraq and Syria have authoritarian regimes, they do hold elections, and despite the fact that both rulers won by over ninety percent of the electorate, the mere fact of holding elections is a democratic trend.

However, the one Arab people who have exhibited the highest amount of democratic trends are the Palestinians. During the Israeli occupation of the West Bank and Gaza, and especially during the Palestinian Intifada, the Palestinians built various democratic civil institutions such as welfare, health, and other social services were developed in order to make life more or less amicable during the oppressive Israeli occupation, and fill in the gaps that the Israelis did not provide.

While ironically using the Israeli government as a model to a certain extent, the Palestinians have developed their society towards a more democratic posture than other Arab peoples. Following the Israeli redeployment of forces as a result of the Israeli-Palestinian Interim Agreement, the Palestinians formalised these institutions into a governing authority. Called the 'Palestinian Authority,' this quasi-governmental institution has a president as well as a legislative council. In January 1996, the Palestinians held free and open elections for the first time. They not only elected Yasser Arafat as president with over eighty percent of the votes, but also the members of the legislative council. Altogether, the fundamental roots for a democratic government (as well as a nation) was set in place. Even though some non-democratic practices still exist, the Palestinians, for the most part, strive to produce and maintain a democratic society.

Aside from the Palestinian model, however, it seems as though the rest of the Arab world is reluctant to adopt the Western concept of citizenship and institute democracy into their governments. Such practices would undermine the autocratic leaders' authority and power, and would give governing ability to the people instead of the regime. Although many Arab countries have constitutions with democratically-inspired rhetoric, it merely serves as a symbolic element in the country's society; something which exists, but is not adhered to. Democracy and citizenship would call for the end of such autocratic regimes, and is therefore not compatible nor accepted.

In addition, it was previously mentioned that the Arab people have a link so strong that the governing authority expresses not only the will of that people, but serves its interests. With that in mind, such a statement would justify the leaders' claims to power, and keep the status quo.

Other factors resist Western practices of citizenship as well. In an effort to rejuvenate and revitalise their religion, Islamic fundamentalists reject all forms of
Western 'man-made' practices in their world. As a result, any concept of citizenship or democracy is non-divine, and therefore plays no part in the pure Islamic world. According to Islamic fundamentalists, Allah knows what is best for Muslims, and as a result, all laws stated in the Quran are prescribed in order to allow Muslims to live happy, free lives. Such an argument makes any call for a Westernised, free society as blasphemous and baseless.

Bearing all of the aforementioned ideas in mind, it seems unlikely that the Middle East, i.e. the Arab world, will ever adopt the pure Western ideal of citizenship and democracy. Perhaps some countries will adopt a few elements of the Western ideology like others did, such as elections and a legislative body. But for the most part, it seems as though for the near future, any possibility for a democratic Arab country seems to be non-existent.

Those countries that do adopt some practices, however, could set an example for the rest of the Arab world, and set a precedent for the years to follow. Perchance with the establishment of a democratic Palestinian nation, other nations will follow suit, or at least invoke a sense of 'enlightenment' throughout the Arab world. This 'enlightenment,' much like the movement which originated in 18th century France, would show the Arabs the benefits of that country. For the meantime, however, solely an economic sense of equality, that being financial parity, would be an enticing factor for the Arab world. Only with a total change in the leadership and thinking in the Arab world will Western democracy and citizenship be accepted in society. Ironically, the term civil society has entered the discourse of the Arab world and has become a central concept in current debate over the direction of politics in the region.

Definitely, this has materialised in the wake of the Cold War and the expansion of the global economy, in which societies are being transformed through political and economic liberalisation processes. If liberalisation has a home, it is in civil society where clubs, syndicates, guilds, associations, unions and political parties provide a buffer between the individual and the polity. Across the Arab World, people are adamantly requesting accountability from their political élites and a greater role in participation and policy-making. There is no doubt that mounting pressure is put on governments in the Middle East to limit its authoritarian wielding power as the regulator of civic organisations and grant more freedom for discourse and organisation.

On the other hand, the Palestinian Authority is still defining its relationship to society. However, in the absence of a national authority and in response to the Israeli occupation, as mentioned earlier, a vibrant grass-roots civil society helped to lay the foundations for the infrastructure of a state. Thus, Civic organisations paved the way for people to participate politically on the local level at least. It is no secret that in the wake of the January 1996 Palestinian Legislative elections confrontations have occurred between the Palestinian Authority and the Civic Organisations, nevertheless, this did not impede the process for civil society to adjust to a non-governmental role.

Indeed, the expanding role of the citizen through economic liberalisation has opened a Pandora's box for societies to question their beliefs and values as related to state operation, priorities and treatment of citizens. This culminated in re-directing
the focus of civic institutions thus undercutting traditional kin-based, patriarchal and matrilineal structures. Additionally, women's movements, charitable organisations, both regular and religious are springing up in Kuwait, Algeria, Egypt, Jordan, Yemen and Palestine. These examples, to a certain degree, offer cautious optimism to the development of civil societies in the Arab World. Of course, believing in civil society as a precursor for democracy, the growing of civil societies in the Arab World would expedite the process of accountability and would create a political ambience for Arab governments to forge democratisation in their political processes.

3. Democratic trends among Palestinians

The quest for democracy is emerging as a global phenomenon. In the post-World War II era, democracy has developed into a universal political norm. In fact, the philosophical aspects of democracy that led to the rise of nationalism are a prelude to independence and prime factor for 'the democratisation of the peripheralised society.' For democracy to be entrenched in a society, it must be strengthened not only on the institutional level but also on the socio-political level. World recognition of the principle of national self-determination has culminated in the globalisation of democracy, a principle that most Third World societies are struggling to achieve.

The Palestinians are no exception, as actors in World politics they could not evade the new global trends of democratisation, even if they wished to. Hence, this led to the new Palestinian political realism and pragmatism. In fact, for democracy to succeed it must be institutionalised in a way that mediates the multiple and conflicting interests that emerge once statehood is declared. This process of transition is difficult as well as critical for developing societies because they lack experience in dealing with methods that often hamper their legitimacy and performance.

Pluralism - a democratic trend - in Palestinian politics has always been assessed in the context of the erosion evident in Arab politics, culminating from fragmentation repressive conditions, economic discrepancies, and lack of legitimacy and credibility. It is small wonder that the basic tenets of democracy - political participation, power sharing, and public accountability - are non-existent in the Arab States. Furthermore, the lack of self-sustaining institutions embedded in consolidated communities is a serious impediment to the emergence of democracy. Consequently, the Arab Middle East suffers from inadequate industrial growth and a heavily militarised, bureaucratised, and centralised governments. Nonetheless, its people are striving to achieve political freedom, justice, and decent life. Therefore, it is imperative to emphasise the human elements which transcend all geopolitical boundaries when analysing the Middle East.

An offshoot of Arab nationalism, Palestinian nationalism over the years developed a secular ideology committed to democracy. However, the process of democratisation has been facilitated by the high level of education and literacy achieved by Palestinians along with the existence of their institutions and professional societies.
The PLO has portrayed itself as the institutional expression of Palestinian nationalism in a framework which all Palestinian cultural, social, educational, political, and military activities are integrated. By providing complex services to the Palestinians, it gained legitimacy in the past and shouldered the burden for integrating the various attitudes and positions of Palestinians refugees living in camps, intellectuals, middle-class merchants, and commandos.

In recent years, the PLO has managed to emphasise certain democratic trends and pragmatism in its political program, and undoubtedly the Intifada has been a catalyst in changing the perceptions, attitudes, and even political strategies, to lay the groundwork for negotiations, political settlement and accommodation. However, the implementation of the Oslo Agreements is a culmination of the PLO's evolutionary political development.

By and large, Western democratic values are practically being accepted everywhere in the World, and the discussion of democracy is carried in the liberal democratic framework. Of course, there is quite a discrepancy between the support for the rhetoric and support for the reality of democracy. Many intellectuals among the Palestinians support genuinely democracy and many of the masses support it because it signifies to them dramatic change and prosperity, however, the ruling elites are at best unwilling converts.

It is quite evident that the procedural definition of democracy is still inadequate among the Palestinians because one cannot presume the existence of the culture of accommodation that makes democracy operational. Yet, an alert political observer cannot negate the fact that the Palestinians in the Occupied Territories have developed certain trends of democratic behaviour relatively inferior to Western Liberal democracy. These democratic trends have been embedded in the socio-political culture of a nascent civic society that have been initiated during the 1980's and 1990's by institution-building and grass root organisations, which today are exposed to disintegration because of the Israeli closure of the territories and its impact on Palestinian economy.

4. The crafting of democracy and the future of Palestine

The Palestinian Declaration of Independence, addresses the question of the type of regime in the future independent Palestinian State. In fact, the last paragraph in the Declaration emphasises full equality in rights among Palestinians, and that Palestinians will be able to enjoy their national and cultural identity. Further, the Palestinian State will safeguard 'their political and religious convictions and their human dignity by means of a Parliamentary democratic system of governance, itself based on freedom of expression and the freedom to form parties.' Moreover, the Declaration has made it clear in the area of authority and representation, "... the right of minorities will be duly respected by the majority, as minorities must abide by decisions of the majority. Governance will be based on principles of social justice, equality and non-discrimination in race, religion, colour, sex under the aegis of a constitution which ensures the rule of law and the independent judiciary ...."  In principle, the language
of the Declaration reflects a philosophical commitment to the development of democratic institutions.

1) Within the PLO emphasis has been made on the importance of democratic procedures in relation to the decision-making process. A shift from consensus to majority politics is quite explicit.

2) Palestinians in the Occupied Territories have established a tradition of elections, and the 1972 and 1976 municipal elections are good examples; not to mention the current ongoing elections in the main professional associations, trade unions, labour unions, student movements, and Women organisations.

3) The high literacy rate among Palestinians has been instrumental in loosening the patriarchal traditional social structure. It is known that the development of education is a prerequisite for a democratic civil society.

4) For many years, the Palestinians have been engaged in heated debates among themselves concerning their future. Of course, the debates have led to a wider acceptance of the principles of negotiations and political compromise - two cornerstones of democratic development.

5) The concept of freedom is extremely important to the outlook of many Palestinian intellectuals and political élites in the Occupied Territories.

6) Emphasis has been made on democracy as a means to encompass cultural diversity and variegated points of view among the interior and exterior Palestinians.

7) Repression of Palestinian leaders of the Intifada has induced diffusion and decentralisation of power to the grassroots organisations.

8) Palestinians during the Intifada have established new patterns of collective behaviour and self-reliance - two characteristics of democratic behaviour.

9) The role of women organisations during the Intifada has undermined the traditional perception of women in the Arab world, and has brought the plight of women closer to social and economic equality.

10) The Palestinian leadership strata represents to a certain degree, a western-educated leadership that may play a pivotal role in the crafting of the new regime of the Palestinian state. Palestinians cannot afford building a non-democratic state, because they will be heavily dependent economically on Western donor countries.

11) The impact of Israeli occupation had prompted the Palestinians to be familiar with a political system that espouses the rule of law and democracy. Paradoxically, it has left a positive impact on the subculture and political culture of the Palestinians, who categorically reject a Palestinian authority that would be a replica of Arab authoritarian regimes.

12) The impact of the Intifada has been tremendous in institution-building and in developing Palestinian infrastructure in the Occupied Territories.

13) The emergence of a middle-class among Palestinians has been significant in the process of building a Palestinian civic society that would bolster a democratic Palestinian State.

Based upon the above-mentioned observations, one could be prone to assert that a Palestinian society, which could lay future relations with democratic neighbours, is evolving democratically. It is worth mentioning that democracy in
Palestine did not take root, it is still in progress and could be considered a fledgling democracy. Giovanni Sartori, explained it best when he warned that: '... new states and developing nations cannot pretend to start from the level of achievement at which the Western democracies have arrived. In fact, no democracy would ever have materialised if it had set for itself the advanced goals that a number of modernising states currently claim to be pursuing. In a world-wide perspective, the problem is to minimise arbitrary and tyrannical rule and to maximise a pattern of civility rooted in respect and justice for each man ... in short, to achieve a humane polity. Undue haste and overly ambitious goals are likely to lead to opposite results.

Definitely, this warning is applicable to the Palestinian political culture, because the Palestinians have never established their own State, and therefore it is premature to expect them to adopt and adapt Western democratic values to their society overnight.

Notwithstanding the many hurdles, there are good indications that Palestinian society will develop democratic principles and will establish a democratic political entity. According to Hisham Sharabi, a leading Palestinian scholar, 'Only a free and democratic Palestinian entity alongside Israel will guarantee a genuine and lasting peace. An autocratic regime, such as exists today in many Arab Countries, would not last but would inevitably lead to economic and political disintegration with unpredictable consequences. Democracy cannot survive in Palestine if it only offers elections and multi-party system. Only real democracy can restore faith in the civic society and maintain self-fulfilment and aggrandisement. Furthermore, democracy cannot develop without a viable economic infrastructure, for the economy of the West Bank and Gaza is presently in shambles. However, an urgent need for stimulating economic development in the Occupied Territories is a pre-condition for political stability in the area. There is no doubt, that over the past years serious structural problems in the Occupied Territories economy have emerged.

4. Palestinian civil society in the making: future prospects

Ideally, civil society should both entangle itself in dealing with government intervention and exhibit a dimension of tolerance within and among the institutions it encompasses. The pertinence of civil society to the democratisation process is solely based on the facts that
1) popular institutions lay the groundwork for grassroots training in the areas of plurality and democratic behaviour and
2) civil society can counterpoise the autocracy of the State.
The Palestinians' experimentation with the development of Civil Society had developed a certain exclusivity when compared with that of the Arab World.

There is no doubt that the Palestinians have contrived to build institutions and organisations that are inclusive of an array of political parties, municipal service organisations, co-operatives, educational institutions, student senates, women's organisations, health care associations, charitable organisations, labour unions, trade unions, business associations, child care facilities, religious groups (including Welfare
and social service organisations run by these groups), think tanks, professional unions and syndicates (e.g., lawyers' guilds and medical associations) and chambers of commerce' (Shukri Abed, unpublished article on Palestinian civil society).

These variegated organisations and groups have developed over the last three decades in the Occupied Territories, and have been responsive in catering to the social needs of the Palestinians in the absence of any political/National Authority. Of course, the services rendered enabled the Palestinians to survive under Israeli military occupation. However, these diverse formations will culminate in the building of an infrastructure of civil and political institutions—a prelude to an independent Palestinian State. Furthermore, the structure of Palestinian civil society is emboldened by several significant attributes conducive to the process of democratisation in the Palestinian autonomous areas.

One of the main attributes is the tolerance of divergent opinions, that has developed into a tradition among Palestinians especially within the political infrastructure of the PLO. The concept of pluralism within the factions of the PLO has been one of the banners which evolved to become an intrinsic value within the Palestinian social system. It is no wonder, that today the opposition forces within the Palestinian political spectrum is respected and tolerated by the mainstream. This is an essential element indicating a level of 'Civility' in Civil Society. Undoubtedly, the opposing groups would act as a check on the performance of the authority in a democratic environment.

Another major attribute is the development of participatory culture in which elections and popular consent are the main sources of legitimacy. A good example to cite, is the active role in political participation by women that stands today as an essential part of Palestinian civil society which in turn has crucial impact on the establishment and consolidation of pluralist thinking and democratic rule.

One can infer that such attributes are already in operation in Palestinian society, and need to be bolstered and legitimised by the Palestinian National Authority. It is fair to say, that Palestinian society has been severely distorted and affected by Israeli military occupation, and in spite of these distortions, the Palestinians had contrived to build a civil society which is still nascent in form and substance. The transition of Palestinian society from a traditional/rural to urban/neopatriarchal is concretely felt by social science observers, however, it is not yet adequate to Western standards. Therefore, Palestinians have still to struggle in the building process of their institutions and have to establish the pre-conditions for such an evolution. The economic factor is a vibrant one in fulfilling this objective, and Palestinians need to have the proper material and spiritual conditions to facilitate this process. Israel, Jordan and the donor countries are keys to the success of the process.

6. Political trends in Palestinian society

Palestinian politics in the 1980's witnessed volatile transformation in the positions, attitudes and practices of the PLO, a change that made its political development non linear. During the 1980s, the PLO had shifted its political
concentration from the periphery to the centre, by giving more weight to the politics of the West Bank and Gaza. An evident catalyst for this change was the impact of the Intifada on the politics of the PLO and its role in shaping its policy formulations. In fact, the democratisation process, which was already implemented by the intelligentsia and grassroots organisations, paved the way for the PLO to consider political accommodation and reconciliation as bargaining tools in the process of negotiations with Israel. It is fair to conclude that the process of building a civil society in the West Bank and Gaza had dramatic effects on the socio-political perceptions of the PLO that were conducive to liberal attitudes and pragmatic positions.

The Palestinian political map is a pure reflection of Palestinian political culture and perceptions, however, it is safe to divide it into four main forces, with the Palestinians living in Jerusalem being an integral part of these forces and political trends. The mainstream, which comprises Fatah and its allies; Feda (Palestinian Democratic Union), and Hizb al-Sha'ab (People's Party). The Left (opposition to the Mainstream), which comprises the PFLP (Habash faction), and DFLP (Hawatmeh faction). The Islamists (opposition to the Mainstream), which comprises HAMAS (Islamic Resistance Movement), Islamic Jihad, and independent Islamist. The Independent Nationalists and the Undecided. Palestinian politics witnessed sharp divisions with the Madrid Peace Conference in 1992, where the opposition, secular and religious, had practically joined forces against Fatah and the mainstream in aborting the peace process. However, with the back channels of negotiations in Oslo between the mainstream of the PLO and Israel, the former curbed all efforts concerted by the opposition in reversing the political trends towards peace with Israel. Regardless of the opposition's attitudes towards the Oslo Accords, it failed to consolidate its power and position because of the lack of viable alternatives and options at a time when the Palestinian people were tremendously suffering from occupation.

Today, the opposition camp is advocating democracy because it fears the oppression of the PA in the early empowerment phase. By and large, the debate over Oslo's provisions has divided the Palestinian national movement, and those in opposition believe that there is no time for diplomacy and that the military struggle against occupation must be continued until Palestine is totally liberated. At least, this attitude is advocated by the Islamic opposition. Israel in turn, has not been catalytic in assisting Arafat to consolidate his power among the various Palestinian constituencies, and made it even more difficult for him by not fulfilling the implementation of the Accords. Arafat has to embolden Palestinian political culture by incorporating various trends of democracy in the institution-building process of a nascent civil society and in state-formation. Therefore, Arafat has been left with no options, except to co-opt HAMAS and the secular opposition into the political process through pluralism and tolerance, however, this is yet to be perceived. On the other hand, it is of relevant importance to shed some lights on the Islamic fundamentalists' political culture since it is the major opposition to the main political stream.
It is not ironic to see compatibility between the religious opposition (Islamic fundamentalists) and the mainstream in defying the occupation's harsh measures taken against the Palestinians. However, the ideology of HAMAS and Islamic Jihad is in total contradiction with the mainstream political discourse. It is worth mentioning that Palestinian Islamic fundamentalists hold the same ideological perspectives of the mother Organisation i.e. the Muslim Brotherhood. In spite of HAMAS's position vis-à-vis Israel and its Zionist political ideology, it is important to note that political Islam is a cultural phenomenon inasmuch as it is a response to the challenges of cultural modernity. There is an explicit response of political Islam to the West's rational outlook of the World. In a nutshell, Muslim fundamentalists view secularism a Western means for the intellectual invasion of the Muslim world. This political discourse is purely reflective in the attitudes, perceptions and cognition of HAMAS and Islamic Jihad, which is at loggerheads with the mainstream political discourse. To conclude, one draws immediate inferences that Palestinian political culture is not uniform in substance and structure and that is quite evident when one compares the politics of the Opposition (religious and secular), with the non-ideological mainstream. Despite the basic differences, there is a consensus that Islam is the basic religion and that it is relevant to time and space, and could accommodate to all tides of changes. It is academic then that the analysis of Palestinian political culture, civic society and citizenship holds true to the Palestinians who live in East Jerusalem, for they are an integral part of the Palestinian community at large, and all kinds of conceptual analysis in this realm is in total application. In fact, Palestinians boast of the fact that most of the civic infrastructure, and the various potential institutions are found in East Jerusalem. However, microcosmically, East Jerusalem is considered to be a potent example of Palestinian political discourse contextually embedded in its political culture.

However, the question of citizenship is in a state of flux pending the ultimate negotiations of the final status issues.
JERUSALEM: ISRAEL'S POLITICAL POSITIONS

David Kling (IPCRI)

Introduction

For three thousand years the Jewish people have looked upon Jerusalem as a national, religious and cultural symbol uniting Jews all over the world. In 1977 Teddy Kollek, long-time mayor of Jerusalem, wrote of the public opinion on the city: ‘There are some Israelis who would give up the Golan, some Israelis who would give up the Sinai, and some who would give up the West Bank. But I do not think you can find any Israelis who are willing to give up Jerusalem. They cannot and will not.’

The topic of this paper will be the Zionist and later Israeli political positions and strategies regarding Jerusalem. We will start with the political positions at the beginning of the mass immigration of Jews in the early 1900's. The end will be the positions on Jerusalem in the peace process. The focus will be on four distinctive historical periods. First the Zionist pre-1948 positions on Jerusalem and the importance of 'Yerushalayim' to Judaism will be described. In the same chapter we will deal with the Israeli political positions regarding Jerusalem from the start of the War of Independence until the June 1967 War. The strategies and policies after the city's unification till the start of the peace process, the Madrid Peace Conference in 1991, will be dealt with in chapter three. In the fourth chapter the policies regarding Jerusalem since 1991 will be described. In a concluding chapter reference will be made to the situation in Brussels.

In each of the periods we will examine the political positions and the major goals and policies that were derived from these. The differences and changes in the positions and strategies, the circumstances in which they came about and the intended and unintended causes will also be dealt with. Most of the attention will go to the policies that were put down after the June 1967 War. From then on Israel had the possibilities to implement almost any policies it thought appropriate, since from then on Jerusalem was Israel's 'undivided, eternal capital'.

1. Zionist and Israeli positions concerning Jerusalem till 1967

In this chapter we will deal with the political positions and strategies prior to the June 1967 War. In Zionist ideology Jerusalem has always had a central role.

1.1. Zionism, Judaism and Jerusalem

The very name Jerusalem has evoked in many people throughout Jewish history images not only of a city in this world but also of a world to come. Jewish faith remains united in their focusing on Jerusalem as the Paradise Lost and the Paradise to be regained. There actually adhere the idea of Jews two Jerusalems. One is the earthly Jerusalem and the other the Heavenly Jerusalem.
Jewish attachment to Jerusalem derives from biblical history, although the role Jerusalem played - and still plays - in normative Judaism and in the folk tradition far transcends its biblical argument. The sanctity of Jerusalem is derived from the Temple, although according to tradition a prior sanctity had dedicated the choice of Jerusalem as the site for the Temple - for it was on Mt. Moriah that Abraham bound his son as a sacrifice. Mt. Moriah is therefore chosen to be the site of the Temple and the Holy of Holies. In associating the Temple site with the patriarchal sacrifice, Jewish tradition is also extending the affinity to Jerusalem from David's conquest to the very dawn of Jewish history: to Abraham, founder of the people. Even after the Temple's destruction, Jerusalem retained its holiness, and the special laws continued to be observed. When praying, a Jew must face Jerusalem; if in Jerusalem, he 'should turn his heart toward the Temple'. The Jews over the ages since the Babylonian exile of 586 BC have repeated Psalm 137: 'If I forget thee, O Jerusalem. Let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth, if I prefer not Jerusalem above my chief joy.'

Zionism aims at the restitution from exile, dispersion, and powerlessness into a state of sovereignty, reintegration, and self-esteem. The centrality of Jerusalem in Zionist consciousness is bound to the centrality of Jerusalem in the land together with an influence of the Heavenly Jerusalem over the Earthly counterpart. Basically Zionism can be seen as a drive towards (the symbol of) Jerusalem.

For many Jews the Dreyfuss affair was the evidence that assimilation did not offer a solution for Jews in Europe, since anti-Semitism seemed so deep rooted. In his book Der Judenstaat Theodore Herzl enfolded the project of a national state for the Jewish people. His starting point was not so much religious as it was nationalistic. The first Zionist Congress in 1897 in Basel chose Palestine as the future Jewish state. The Zionist dream conceived of Israel as a safe harbour where the Jewish people could live normal lives and occupy positions in all levels of society free from anti-Semitism and persecution. Since the end of the 19th century immigration of Jews to Palestine, a part of the Ottoman empire, steadily evolved. Because of the centrality of Jerusalem, already before the 1920's, when the first valid census was taken by the British, the Jews were the majority in the city. Most argue, however, that in the second half of the 19th century the Jews became a majority in the city. The immigration prior to the establishment of the British Mandate over Palestine was primarily non-Zionist.

For the Jews, the struggle in Jerusalem was part of their national struggle. The solutions offered in the 1930's by the British and the League of Nations were generally acceptable to the Jews. With the rise of Arab nationalism and the parallel increase in the Jewish population, violence seemed inevitable and eventually broke out in 1936. The British Government appointed the Peel Commission, which recommended the partition of Mandatory Palestine into two states, with Jerusalem remained under British control. The reaction to the Peel Commission by the 20th Zionist Congress in Zurich was that a Jewish state without Jerusalem would be 'as if it were a body without a head.' Still the plan was accepted.

In 1938 the Jewish Agency submitted a memorandum prior to the issuing of the White Paper concerning the division of Jerusalem. It suggested that the 'new Jewish
Jerusalem', including the quarters west of the Old City and the area of the Hebrew University, should be included in the Jewish state. The Old City and the areas to its north and south, which were populated primarily by Muslims and Christians, would remain under the British Mandate.

In 1939 the White Paper was issued by the British Government, which suggested the founding of a unified Palestine - neither Arab nor Jewish - with immigration restrictions for the Jews. The Jews were not pleased with this plan, because on the one hand they felt that Britain had already committed itself to the creation of a Jewish state and on the other because of the immigration limits. After World War II an Anglo-American Committee of Inquiry was created, and in its report released in May 1946, it recommended also that Palestine be neither an Arab nor a Jewish state. The plan founded in favour with neither parties. The Jews wanted a Jewish state next to an Arab one, and the Arabs believed they were entitled to the whole of Palestine.

Taking up the Palestine question in May 1947, the UN appointed the United Nations Special Committee On Palestine (UNSCOP). The report proposed the division of Palestine into three parts: an Arab state, a Jewish state, and an international zone centred on Jerusalem. The city would be a corpus separatum - a special international regime under the UN Trusteeship Council. The United Nations established a Working Committee to start developing outlines for the legal and political framework for the city. While this framework was being worked out, fighting erupted in Palestine. The British Mandate ended on May 14, 1948, and the state of Israel was proclaimed. By the time of the ceasefire in 1949, Jerusalem had effectively been partitioned by military events.

1.2. Israel's political positions towards a divided Jerusalem

Two main factors shaped the Zionist-Israeli positions on Jerusalem throughout the first Arab-Israeli war of 1948: the UN decision on 29 November 1947 to treat Jerusalem as a corpus separatum administered by the UN, and the development of the strategic military situation around Jerusalem during the war. In 1948 the suggestion of internationalisation of the city was grudgingly accepted. If forced to choose between the two British positions - a bi-national state with Jerusalem or two states without Jerusalem - the Jews preferred the latter. With regard to the internationalisation of Jerusalem, Ben Gurion, then chairman of the Jewish Agency, said that the Jewish leadership recognised that 'this was the price we had to pay for the establishment of the state. We accepted the UN resolution as a whole. If the Arabs would have accepted it as a whole, too, we would have fulfilled it.' But in September 1948, Ben Gurion reacted to the Count Bernadotte plan by proposing a military venture against the eastern half of Jerusalem, and also targeting Hebron, Ramallah and Jericho. He intended to propose UN administration of Jerusalem's Old City when Israel had conquered these areas. The temporary government of Israel voted it down by a vote of seven to five with one abstention. Years later, Ben Gurion described the vote as 'a tragedy for generations to cry on.'

The war brought a different outcome than the UNSCOP Plan. When both Jordan and Israel took control over a part of Jerusalem, they both saw it in their best interest to leave the situation as it was. Both preferred controlling 'their' part of Jerusalem, above
internationalisation. A small corridor of land between Jerusalem and the rest of Israel was barely held on to.

The application of Israeli law to the western sector of Jerusalem was ensured by proclamations made by the Minister of Defence in 1948 during the war, and by the Area of Jurisdiction and Powers Ordinance of that same year. This ordinance provided that the law in force in the State of Israel should also apply to any part of Palestine which the Minister of Defence would designate by Proclamation to be under occupation of the Israeli Defence Forces. When, in 1949, an armistice agreement was finally signed, Jerusalem had become entirely divided between Arabs and Jews. The Jordanians held on to the Old City and the areas to the east. The Israelis had control over the parts west of the Old City and Mt. Scopus in East Jerusalem, which would be demilitarised, but accessible to the Israelis. A small portion of land, south of the Old City, became no man's land. The UN had the so-called Government House here. 60,000 Arabs fled and/or were expelled from West Jerusalem and some 3,000 to 4,000 Jews were expelled from the Old City.

Following on the renewed debate on Jerusalem in the UN General Assembly in 1949, Israel's Prime Minister David Ben-Gurion announced in the Knesset that Jewish Jerusalem [was] an integral part of the State of Israel ... we cannot conceive of the possibility that the UN should attempt to tear out Jerusalem from the state of Israel, or to strike at the sovereignty of Israel in her Eternal Capital. Later it was stated that this had been done primarily, because the United Nations had, in the eyes of Israel, failed to see the importance of Jerusalem to the Jewish people. Abba Eban said years later: 'If the UN had only recognised our deep emotional ties to Jerusalem, it would have been enough for us; we would have settled for this. Many of our leaders saw Jerusalem as an educational and cultural centre, not necessarily or even ideally the capital of the state.'

During the nineteen-year period of Jerusalem's division, the political issues of control and sovereignty were seemingly resolved. There were two Jerusalems, each developing under their own state system. In keeping with the Jews' national and ideological attachment to their historic capital - and despite widespread international opposition and non-recognition - Jewish Jerusalem became Israel's capital and the seat of its government.

The major Israeli goals with regard to Jerusalem between the establishment of (West) Jerusalem as Israel's capital and the June 1967 War were to make Jerusalem Israel's capital in every sense of the meaning. This meant that the national institutions were brought to Jerusalem, that a large Jewish population was to inhabit the western part and that international recognition would be given. On January 23, 1950, the Knesset declared that the buildings for the Government and Knesset would be set up in Jerusalem. Between 1949 and 1951 most of Israel's political and judicial institutions were brought to the city. In 1953 the Ministry of Foreign Affairs followed, which brought about angry reactions from abroad. Till 1955 most ambassadors refused to go to the Foreign Ministry in Jerusalem. The ministry had left a small office in Tel Aviv due to this. Until this very day the international community has not recognised Jerusalem as Israel's capital, although new embassies moved to Jerusalem.

The building of Jerusalem in demographic and economic sense was largely successful. In 1946 there were 99,300 Jews in Jerusalem and in 1967 there were 197,700.
Still, Tel Aviv was the largest city and even Haifa had more inhabitants. Economically speaking Jerusalem benefited from the fact that it was proclaimed the capital. Many state institutions were brought to the city. Public resources were allocated to the city to promote population growth and employment opportunities. This was necessary because of its peripheral location as a border town, only in touch with Israel through a small corridor. 'Public services thus became the principal economic base of this [Israeli] part of the city.'

Although Israel did not obtain all of Jerusalem. After 1950, there was no arguing within Jewish society for conquering the rest of Jerusalem. Ben-Gurion adapted to the new political circumstances after 1948 by 'boosting a passion' for a relatively small Hebrew Jerusalem, tailored to available political opportunities and existing international constraints.

2. Israel's positions and policies after unification

When the June 1967 War broke out, Israel promised to refrain from attacking Jordan, if Jordan would do likewise. Jordan, however, due to international obligations concerning mutual defence treaties, attacked and shelled West Jerusalem. It is argued however, that part of the Israeli Government and army were only too eager to make use of it. Shortly after the first Jordanian shells had fallen, General Narkiss reportedly exclaimed to Mayor Teddy Kollek: 'You may well be mayor of a united Jerusalem.' And on June 7 general Haim Bar-Lev said to general Gur, when he authorised him to attack the Old City: 'We are already pressed for a cease-fire. We are at the Canal. The Egyptians have been carved up - don't let the Old City remain an enclave.'

The government approved the conquest of the Old City only after hesitation, resulting from the fear of damaging the Old City by some ministers. Before the afternoon General Gur announced on the radio: 'Temple Mount is in our hands.' Upon arrival the flag of Israel was put on the Western Wall. Rabbi Goren and his assistant blew the shofar put the scrolls in a gap between the stones of the Wall, kissed the floor and said the Shehecheyanu blessing. The authors of the book 'The Western Wall' concluded: 'Surely, .... The Kotel Scene on that Wednesday .... June 7, 1967, the third day of the Six day War - was, 'the heart of the matter'. In each place - far and near, amongst troopers as well as children, new immigrants and elderly, - 'the heart of the matter' touched every heart.'

A few days further into the war, Israeli Defence Forces recovered no man's land which had been taken by the Jordanian army ('Government House'), and dislodged the army from East Jerusalem and the West Bank.

When the fighting was over, various measures were taken in order to include East Jerusalem in Israel's jurisdiction. The Knesset passed the Law and Administration Ordinance (Amendment No. 11) Law, 1967, thereby authorising the government to apply the law, jurisdiction and administration of Israel to any area which was formerly part of Mandatory Palestine. Likewise the Municipalities Ordinance was amended to allow for the extension of the boundaries of the municipality. A decision was made to apply Israel's jurisdiction to a certain area. And in fact, the government issued an appropriate order as a
result of which Israeli law was made to apply to the eastern sector of Jerusalem, which was also included within the jurisdiction of the Jerusalem municipality. At the same time the municipal council and the position of mayor of East Jerusalem were disbanded.

Since 1967, Israeli policy in Jerusalem is perceived by policy-makers as an expression of the Zionist ideology that sees the effort to settle land and increase the Jewish majority as tools to ensure control over an area, in this case Jerusalem. This policy enjoys a broad consensus among the Jewish public, a fact which also provides policy-makers with additional justification for this approach. Efforts were made to ensure Israeli hold over the city by policies like ensuring a Jewish majority, Israelisation of the city, international recognition of the status of Jerusalem, and others. The two following quotations from Moshe Dayan and Teddy Kollek represent the atmosphere in which Israeli policy toward Jerusalem has been shaped and executed over the last thirty years. 'We have reunited the torn city, the capital of Israel. We have returned to this most sacred shrine, never to part from it again.' The beautiful golden city is the heart and soul of the Jewish people. You cannot live without a heart and a soul. If you want one simple word to symbolise all of Jewish history, that word would be Jerusalem.' During the first three weeks after the war, Israeli authorities acted swiftly to integrate the two zones of Jerusalem. The Jerusalem Master Plan was expanded to include East Jerusalem. The water, sanitation, telephone and electrical systems were united. The municipal bus service extended its routes. And, most important, the physical barriers that had separated East and West Jerusalem were removed, permitting free movement for Jews and Arabs throughout the city.

All the major strategies towards Jerusalem stem from the political stand that Jerusalem is Israel's 'undivided eternal capital'. One of the ways to ensure this was to create a Jewish majority in East Jerusalem. A Palestinian majority was seen as a demographic threat. In a planning summary prepared for the Jerusalem Committee in 1985, Israeli academics and planners wrote: 'The Jewish [construction] effort, almost exclusively through government initiative, is the result of national policy designed to create a new base situation and to forestall any thought of re-dividing the city.'

In deciding the new boundaries for Jerusalem in 1967, policy-makers kept in mind that they in all probability eventually would constitute the new eastern borders of Israel. The placement of the new municipal boundaries 'was determined according to a strategic-demographic policy and not according to pure planning considerations. The interest of this policy was to include within the city ridges and sites which provided strategic control of the city and the roads leading to it, along with large additional territories containing a minimum Arab population.' The new municipality borders included now East Jerusalem and 28 Arab villages and towns. This policy aimed at creating in one stroke a new security buffer zone to neutralise Jerusalem's vulnerability to the east, and at the same time isolate the Palestinian population of East Jerusalem from those living in the West Bank. This would entail political and economic separation. Moreover, it aimed at including as much land and as small a number of Palestinians as possible. This was done to ensure the future hold over the city by the Israelis, in concordance with the concept of Jerusalem as Israel's eternal, undivided capital.

Another way to secure Jerusalem's pivotal position as Israel's eternal capital was the
rapid development and strengthening of its economic infrastructure. Jobs, industry and infrastructure were built for Jewish Jerusalemites. On the other hand measures were taken to ensure that the economy of Arab Jerusalem would not develop. To guarantee that this could be done, Palestinian residents of Jerusalem had to be Israeliised or at least pacified. They were given (minor) concessions, and policies were put forward to integrate them within Israeli society. At the same time Israel was pursuing international recognition for Jerusalem's status.

2.1. Changing the face of Jerusalem: enlarging the Jewish majority

The June 1967 War changed the direction of national ambitions in terms of population. From a drive to enlarge the Jewish population in the Galilee and the Negev, the emphasis was now on Jerusalem and the (Occupied) Territories. The maintaining of the Jewish majority in Jerusalem was done by all governments. The way in which they did this was almost identical. There were some differences however between Likud and Labour governments.24 ‘There is a government decision to maintain the proportion between the Arab and Jewish populations in the city at 28 percent Arabs and 72 percent Jews. The only way to cope with that ratio is through the housing potential. On this basis the growth potential is defined, and the capacity is a function of that here as well.’25 The proportion was used by all governments since 1968.26

In 1967, with the creation of the new municipal boundaries, there were 66,000 Palestinians living in East Jerusalem. 44,000 of those were living within the old Jordanian municipal boundaries. At that time there were 197,600 Jews living in the city. In 1968 the Jerusalem Master Plan mentioned the target: ‘Enlargening the weight of the Jewish population, or creating a situation whereby it would grow faster than the Arab minority population’.27 ‘In 1972 it became clear that the target of the 1968 Master Plan could not be achieved.’28 The 3.5% growth of the Arab population could not be countered. The goal became less ambitious, which meant that now the emphasis laid on preserving the Jewish majority. In the beginning of the 1980’s Jerusalem began to be referred to as a metropolitan city.29 The metropolitan city entails Bethlehem in the south, Maale Adumim in the east, Ramallah in the north and Mevaseret Tzion in the west. It is about 5 times the size of the municipality Jerusalem. Israelis started talking increasingly of a ‘Greater Jerusalem’. ‘The demographic problem in Jerusalem, and its consequences in the future, is no longer the balance in the city itself, but rather in the metropolitan area.’30

Over time it became clear that the creation of a large majority in the Greater Jerusalem was not feasible. In 1992 there were 412,000 Jews and 394,000 Arabs in Greater Jerusalem, not a clear majority. In 1990 a new demographic goal was proposed, the attaining of a Jewish majority in East Jerusalem. In 1995 there were approximately 170,000 Jews and 160,000 Arabs registered as living in East Jerusalem. These are people who officially live in Jerusalem. The actual number of Arabs living in the city is lower, due to the housing shortage. Most of those who left, have moved outside the municipal boundaries, but remained within the metropolitan area.

The enlargening of the Jewish community was done along two lines. On the one hand there was the prevention of Palestinian building in East Jerusalem, on the other hand
there was the planning and building of Jewish neighbourhoods.31 ‘Every area of the city that is not settled by Jews is in danger of being detached from Israel and transferred to Arab control. Therefore the administrative principle regarding the area of the city's municipal jurisdiction must be translated into practice by building in all parts of that area, and to begin with, in its remotest sections.32 The new neighbourhoods were primarily built on the east side of Jerusalem. Between 1967 and 1995 about 64,870 homes were built for the Israeli's and about 8,890 for the Palestinians.33

2.1.1. The prevention of Palestinian planning and building in East Jerusalem

There are basically six ways applied to prevent Palestinian building in Jerusalem. These can be described as 1) the blue line, 2) land use, 3) building rights and height regulations, 4) expropriation and 5) demolition and 6) planting. Planting is used in the whole metropolitan area of Jerusalem. The others are primarily used within the municipal boundaries. Neighbourhoods are required to have an approved Town Planning Scheme (TPS) before any building can commence. In these TPS's blue lines, height regulations and other stipulations are laid down.

1) the blue line

The specific land area to be zoned is encircled with a blue line in every Town Planning Scheme. In each of the Arab neighbourhood plans prepared by the Municipality, the blue line encircles areas of the neighbourhood that are already built up. As a result only those vacant lots that are scattered among existing houses are zoned for new construction, whereas the bulk of the vacant land resources of the community remain ‘unzoned’ and therefore useless. This is called ‘green land’, in the sense that it can not be used for building.

There is an unofficial quota for the amount of new housing that may be built in the Arab neighbourhoods of East Jerusalem. The planning is not done on (Palestinian) need, but on schemes regarding demography, land ownership and projected (Israeli) needs. From 1967 until 1992 there were close to 9,000 units built by Palestinians. According to the Israeli civil rights movement B'Tselem there is a need for at least another 20,000 residential units.34

2) land use

Every parcel of land within the blue line is colour-coded to indicate permissible land use. Land painted green on the map is designated for public open space or for the preservation of unhindered views of the landscape. It may not be used for construction. The colour green predominates in every Arab neighbourhood plan. Among the written regulations that accompany a town plan there is a specific stipulation that grants the Municipality the right to expropriate the land when it is ready to develop a park. This stipulation does not accompany any of the Arab neighbourhood plans, indicating that the Municipality does not intend to eventually develop a public park on the land painted green. This gives cause to believe that green zones in Arab neighbourhoods are actually created to prevent Palestinian building.
3) building rights and height regulations

The law permits the designation of a variety of housing zones, ranging from sparse to dense construction. Building rights are calculated as a percentage of the size of the building lot. Only zones in the sparse categories (15%, 25% and 50%) are applied to Town Planning Schemes in Arab neighbourhoods of East Jerusalem, whereas the Jewish neighbourhoods of East Jerusalem enjoy the dense categories (up to 300%). Similarly, building height in Arab neighbourhoods may not exceed 2 stories whereas buildings in the Jewish neighbourhoods of East Jerusalem are permitted as many as 8 stories and lately even more.

4) expropriation

Expropriation is done primarily in two ways. The predominant one is expropriation by the Minister of Finance. He has almost unretained discretion as to what public services are and determines what is needed for these public services. Most of the time ‘public’ refers to the Jewish public. The minister has the authority to expropriate and to pay compensation. Compensation was refused by Palestinians as part of their strategy of non-recognition and non-co-operation. The other way of expropriation is by the Municipality. The Municipality can only expropriate land when the public use is clearly stated. Most of the time it will be schools, roads, government buildings, etc. The expropriation will be done through the Town Planning Schemes.

The 27,000 dunum expropriated in East Jerusalem by the Israeli government has provided land for 9 new neighbourhoods and subsidised housing for 70,000 Jewish families. No land has been expropriated, or otherwise amassed, for the purpose of intensive development of housing for Arabs, nor has a single housing unit for Arabs on Arab-owned land been subsidised by the government. One third of the land annexed in 1967 by Israel was expropriated. About 80% belonged to Palestinians. The rest was Jewish ownership before 1967 or undetermined ownership.

5) demolition

The Municipality may not grant a permit for construction on unzoned land. The law enables the demolition of all buildings constructed without a permit. Ostensibly concerned with preventing violations of the law, the Municipality may issue demolition orders for houses it can find that are built on unzoned land. In this way the land is kept vacant so that the government may expropriate it in the future for new housing projects.

6) planting

In the area of Greater Jerusalem ‘a clear function of Israeli planting which is visible in the landscape, and supported by documentation, is to prevent the spread of Palestinian land use to areas heretofore unused.’ Forests are also used in those areas that may have been, or in the future might be, used by Palestinians, but that are currently vulnerable to the application of Israeli control. Another is the ‘landscape function’, which is meant to set Jerusalem apart from the West Bank.
2.1.2. Building Jewish neighbourhoods

The building of Jewish neighbourhoods after 1967 was done primarily on expropriated land. So the expropriation of land was both used for preventing Palestinian building and for the actual creation of Jewish neighbourhoods. The expropriation was predominately performed by the Ministry of Finance. This ministry has almost absolute discretion in determining what is public use, and can therefore expropriate land. Some 38,500 housing units were built on this land for the approximately 170,000 Jews.

Zoning is done by the municipality and approved by the government. It goes through the following steps: first the Minister of Housing, the Minister of Interior and the Mayor of Jerusalem give a broad policy intention for the planning. This will be based upon the government decision to have a 72/28 proportion of Jews and Arabs as mentioned earlier. Secondly, the Municipality makes a Town Planning Scheme. This is done by the Town Planning Committee, who gives it to the City Council for approval.

Then the TPS is forwarded to the Regional Planning Committee, which is under the jurisdiction of the Ministry of Interior. They give up the plan on approval, which enables the public to present opposition. Here the Palestinians have the possibility to oppose to the plans and take legal actions against it. The Palestinians have not made much use of this possibility. If necessary, changes are made, and thereafter the scheme is send to the Minister of Interior, who has the final word. If the Regional Planning Committee or the Minister of Interior oppose the plan they will send it back to the Town Planning Committee with their remarks, so it can be changed. In principle the whole process of the planning takes roughly 10 years, although some planning processes have taken 19 years before the plans where finalised. The process usually takes longer in Arab neighbourhoods.

To enhance the creation of a Jewish majority, building was facilitated for Jewish housing. TPS's were adopted faster for Jewish neighbourhoods. TPS's for these area's had plans incorporated for the actual building. Loans were given to the housing industry on the west side and subsidies for those who chose to live in these new Jewish neighbourhoods. An adequate infrastructure was also created. All this is in contrast to the Arab neighbourhoods of East Jerusalem as former mayor Teddy Kollek stated in an interview:

[Kollek:] ‘We said things without meaning them, and we didn't carry them out, we said over and over that we would equalise the rights of the Arabs to the rights of the Jews in the city - empty talk... Both Levi Eshkol and Menachem Begin also promised them equal rights - both violated their promise... Never have we given them a feeling of being equal before the law. They were and remain second- and third-class citizens.’

[Question:] ‘And this is said by a mayor of Jerusalem who did so much for the city's Arabs, who built and paved roads and developed their quarters.’

Do you think it was for their good, for their welfare? Forget it! There were some cases of cholera there, and the Jews were afraid that they would catch it, so we installed sewerage and a water system against cholera....

An additional reason for the creation of the neighbourhoods in East Jerusalem was to create a separation between Palestinian in East Jerusalem and the West Bank. The neighbourhoods form a circle around East Jerusalem, making the Arab parts like little unconnected islands. There were no roads built between the different Arab parts, so Palestinians have to go through Jewish areas to go from one Arab neighbourhood to the next. There are hardly any roads that run directly from Palestinian neighbourhoods in East Jerusalem to the West Bank. Here too, people mostly have to go through Jewish neighbourhoods.

2.2. Dealing with Palestinians in and out of Jerusalem

After the June 1967 War the Palestinian conflict flared up again with great force, and their claim for self-determination and national sovereignty received ever-widening recognition internationally. The Israelis regarded the Palestinian struggle as a direct threat to their national sovereignty and were (are), therefore, opposing it with all their might. The Palestinians, at that time, held positions between non-recognition/non-co-operation and the pursuing of the destruction of Israel.

One of the first laws brought in force after the war was the Protection of Holy Places Law, 5727-1967. This law, of June 27, 1967, stated that anyone who violated the freedom of access of members of the different religions to the places sacred to them, would be liable to imprisonment. A few days earlier Prime Minister Eshkol made a statement to the heads of the Jewish, Christian and Moslem communities of Jerusalem. In this announcement the PM stated that all Holy Places in Jerusalem would be open to anyone who wished to pray in them. The Government of Israel laid it down as a basic principle of its policy to guard the Holy Places, to ensure their religious and universal character, and to maintain freedom of access to them. The internal administration and the arrangements in the Holy Places would be handed to the religious leaders of the communities to which they belong. This was seen as an important means of pacifying Palestinians and avoiding international condemnation.

Palestinians within the new municipal boundaries were given the status of ‘permanent residents’. They can chose to become citizens of the state of Israel. This, however creates an ambiguous situation. ‘The reasons for this technical ambiguity are obvious. On the one hand, the Israeli government wished to lose no time in establishing the incorporation of Arab Jerusalemites a fait accompli and thus to put it beyond international discussion [... ] On the other hand, Israel wished to avoid being in obvious and direct violation of international law [... ]’ As permanent residents, Palestinian Jerusalemites do not have the same rights equal to those held by Israeli citizens, but are subjected to Israeli administration, laws and taxes. Permanent residents can not vote in national elections, only in the municipal ones. They are entitled to receive National Insurance benefits, health insurance and other social welfare benefits. Despite this legal
entitlement to city services and benefits, a study of the 1980-1981 municipal social welfare budget demonstrates policies that discriminate the Palestinian population\textsuperscript{42} - indeed, for the most part public expenditure has gone into the Jewish sector at an estimated rate of 9:1.\textsuperscript{43}

In 1967 the government planned to implement the ‘curriculum’ in Israeli Arab schools in East Jerusalem. The Palestinians threatened not to open the school year, both because they opposed such an imposition by an occupying power and because the Israeli curriculum would not enable them to continue studies at Arab universities. The government's concession was to use its Arab curriculum in the public schools, but to allow private schools to use the Jordanian curriculum. Due to the fact of a huge drop of students during the next two years in the public schools, a compromise was found in a curriculum incorporating both Jordanian and Israeli elements. Over the years the curriculum has more and more become ‘Jordanianised’, which the Israeli government has chosen to ignore.\textsuperscript{44}

These kind of policies and the ones that will be described in the paragraph on the economic situation were done to enhance the process of Israeliisation. This process was designed by the Israeli government to ease the annexation process in East Jerusalem. The municipal integration consisted in trying to incorporate Palestinian residents of East Jerusalem into Israeli municipal life through social and economic measures. "The commitment of both Labour and Likud governments to building an image of greater Jerusalem as an integral and permanent part of the country, can also be measured by their willingness to accord greater rights to Palestinians living within the new municipal boundaries than to Palestinians in the rest of the territories occupied by Israel in 1967."\textsuperscript{45}

Permanent residents have more rights, such as better health insurance and social security.

Another measure taken in this sphere was mentioned by Benvenisti: "The political guidelines followed by all Israeli bodies dealing with East Jerusalem led them to dismantle any form of independent Arab organisation, while refraining from the creation of any special body to deal with East Jerusalem so as to enforce the \textit{faits accomplis} totally and unambiguous."\textsuperscript{46} This process of Israeliisation was countered by the Palestinians by a process of Palestinianisation, the restoring and establishing of Palestinian institutions. This was more of a unplanned reaction to Israeli policies, than a strategy implemented by the Palestinian leadership. With regard to the political separation mentioned earlier, the Palestinians refused any offer of political co-operation, boycotting elections to the municipality. Less than 5% of the Arabs voted at each election. This was also part of the non-recognition/non-participation strategy that the Palestinians maintained.

A variety of municipal and other arrangements have been suggested, to accommodate Arab aspirations as far as considered possible without conceding on formal sovereignty. The Minhalot - or local management committees - were designed to increase neighbourhood self-management in the areas of physical maintenance, planning and education. Due to the inadequacy of the Minhalot system in Palestinian eyes, Mayor Kollek and others supported the creation of a decentralised municipality. Boroughs would be created along ethno-territorial lines. Powers would be divided between a borough council and the city council through an umbrella municipality for Greater Jerusalem, elected by equal representation. In this plan the Palestinians could exercise broad autonomy in social, cultural and educational affairs in those boroughs where they formed a
majority.

Another plan for municipal arrangements was developed by Shmuel Toledano. In the context of a comprehensive Israeli-Arab settlement and the establishment of a Palestinian state, which would not include Jerusalem, it calls for the creation of a separate municipality in Palestinian East Jerusalem headed by a Palestinian mayor. Jewish neighbourhoods in East Jerusalem and West Jerusalem would form an Israeli municipality. Only a small amount of Minhalot have been successfully established.

In 1988 the outbreak of the Intifada surprised the Israelis. ‘The main reason for the Israeli surprise was the fact that even the Palestinians themselves - not only the leadership but also the youngsters at the barricades - were surprised at what happened.’ The initial reaction - with guns - was soon to be followed by less lethal policies. ‘His [then Defence Minister Rabin’s] solution was that beating was better than killing.’ This policy was met with harsh condemnation from the international community as well as from part of the Israeli public.

In its effort to smother the Intifada, the Israeli government aimed its strategy at reasserting the army's control and re-establishing the population's bureaucratic dependency on the civil administration (i.e., the military government). One of the ways through which this was done was an increased use of administrative controls and collective punishments in order to exhaust the population. None of the policies could put the Intifada down. It was not until the Madrid Peace Conference that the Intifada died out, because the Palestinians believed that peace was finally on the horizon.

‘To the surprise of the Israeli authorities (both national and municipal) who were convinced that the “unification” process of the city was succeeding, the Intifada spread rapidly to East Jerusalem.’ The Intifada was not as severe as in the West Bank and Gaza, but it made apparent that the Israeli policy of Israelisation had not worked. When in August 1990 the biggest riots in the city took place, one Israeli paper wrote in its editorial: ‘The events of the last three days in Jerusalem put into question the ability of the Israeli government to rule in its own capital.’

2.3. The economic infrastructure

Right after the June 1967 War, the economy of East Jerusalem was separated from that of the occupied West Bank and joined to that of Israel. Jerusalem Arabs were subjected to taxes and commercial regulations; Israeli currency replaced that of Jordan; Jordanian banks were closed and branches of Israeli ones opened; trade with the West Bank was restricted and was subject to import controls, while trade with the Israeli hinterland was opened up. The economic planning directed at the economy of East Jerusalem is to ensure its incorporation to Israel and to cut it of from the West Bank.

These policies, however, failed to separate East Jerusalem economy from the West Bank. It has brought constraints on it however. The Intifada made this apparent when Palestinian shops refused to sell Israeli goods. Furthermore, hardly any shops owned by Israelis have been opened in East Jerusalem and vice-versa.

The East Jerusalem Development Company (EJDC), set up after 1967, is jointly owned by the municipality and the Ministry of Tourism (2/3). Its brief is to promote
‘tourist infrastructure’ throughout the city. The main efforts of the EJDC have been devoted to the embellishment of the Old City. It focuses both on West and East Jerusalem. Any other stimulation from Israeli government or municipal side for the economy of East Jerusalem will be hard to find. Up till now two industrial sites have been built in East Jerusalem, but they are exclusively used by Israeli companies.

On the Jewish side the policies have been directed into assuring enough employment and economic growth for the explosive rise of the Jewish population in the city. Although Jerusalem’s economy is not as strong and flourishing as the economy of Tel Aviv, the policies directed toward the economic development of Jewish Jerusalem have mostly been achieved.

2.4. International (non-)recognition of Jerusalem’s status

In 1967, Israeli policy-makers were convinced that international recognition of the annexation of East Jerusalem was only a matter of time. Earlier Zionist experience proved that the world community had successfully come to accept new political facts on the ground as a fait accompli. This proved to be a wrong perception. Not only was the annexation of East Jerusalem not accepted, resolutions by the Security Council and other public statements of position by the world’s nations have ensured that until today Israel’s capital is not recognised, and the international political conflict over the city remains deep and unresolved.

The Protection of Holy Places Law of 1967 can be seen as an attempt to circumvent international condemnation. Another measure taken in this respect was the option for Palestinian Jerusalemites to choose for Israeli citizenship. It was not forced.

During the Likud Governments a decision was made to transfer ministries from West to East Jerusalem. Also other state institutions have been transferred. Other policies to demonstrate the Israeli hold, are the celebrating of Jerusalem Day and the creation of the Ministry for Jerusalem Affairs.

During the Camp David Agreements in 1978, the question ‘Jerusalem’ was raised time and again. The Egyptian President, Anwar Sadat, brought up the question of Jerusalem at every meeting. Menachem Begin, Israel’s Prime Minister refused to discuss the issue. The Israelis refused even to see Jerusalem mentioned in the body of the agreement. Begin later said that the Israeli delegation had threatened to walk out when Jerusalem was first mentioned and after he had received a draft letter stating the US view that Jerusalem is ‘occupied territory’.

On 30 July 1980, the Knesset adopted the Basic Law on Jerusalem which officially annexed the pre-1967, Jordanian-controlled eastern part of the city to Israel, and established it as its capital. The law originated with a private bill offered by Geula Cohen of the far-right Tehiya party. It proposed to include Israel’s claim concerning expanded Jerusalem in Israel’s ‘constitutional’ collection of basic laws. Three different components led to the adoption of the bill, which was merely a formal act of declaration since Jerusalem was already a united city under Israeli control. The three components are: a) the challenge from the external environment, b) the domestic demand, and c) the elite response.
The challenge from the international world came from three sources; the international community, the Arab world; and Egypt. From the side of the world community more and more resolutions were issued in which Israel's occupation of and settling in any part of the West Bank - including East Jerusalem, which was seen as a part of the first - were denounced. The challenge from the Arab world emanated mainly from the initiative taken by Prince Fahd, deputy Premier of Saudi Arabia, who suggested that his country would bring the Palestinians to the conference table, if Israel pledged to withdraw from Arab lands. The US applauded this initiative, mounting the international pressure. Egypt's challenge has been described above.

Domestic demand for foreign-policy action was pressed by groups and individuals having a personal stake in the issue. An examination of Israeli public opinion does not reveal any explicit demand to annex East Jerusalem. The elite response can be treated as a catch 22 situation. Voting for the bill was seen as asking for an international denouncement, whereas voting against the bill, was not wise from an electoral point of view. So most parties joined what seemed a parade of unity. Moshe Dayan noted: ' [...] there has never been a law with such a meagre support approved by so many votes.'

It was predictable that the United Nations General Assembly and Security Council would denounce Israel. That President Sadat would initially react by suspending already-stalled West Bank autonomy talks, could also have been foreseen. The diplomatic setback that was not anticipated was the removal from Jerusalem to Tel Aviv of all of thirteen embassies located in Israel's capital - a serious blow undermining years of patient effort by Israel to affirm legitimacy of Jerusalem as its capital.

As stated earlier, the international community does not recognise the annexation nor occupation of East Jerusalem. It sees it as an integral part of the West Bank and the future Palestinian state. The status of Jerusalem should be determined through negotiations. The Israeli Government failed to alter these views, but all this time it has managed to convince the United States and others to give aid and loans.

2. 5. Differences between Labour and Likud

Labour party governments originally fostered the expansion of Jerusalem with no clear notion of the city's future relationship to the West Bank as a whole. Gradually, however, Labour's centre of gravity swung toward withdrawal from large parts of the West Bank in return for peace. For the Likud and its allies on the Right, the political logic of idealising an expanded Jerusalem has always been clear. These thoughts were based on the following. The annexation of Jerusalem will wreck any peace process and unless there is a peace treaty, there will be no withdrawal from the West Bank and Gaza. This will mean the continuing of Israeli control and the fulfilling of the dream of 'Eretz Israel'.

With regard to the creation of a Jewish majority in East Jerusalem there have been differences, in significant detail, but not in the overall picture. It was the policy of the Labour government, not to engage in Jewish settlement activities in existing Palestinian neighbourhoods, with the exception of the Jewish Quarter which was expropriated right after the June 1967 War. This was obviously not the case with the Likud governments dealing with the Muslim Quarter, Silwan and Ras al-Amoud. In these Palestinian
neighbourhoods Israeli settlement was allowed or even encouraged. There were also major differences with regard to the laws that were used. How these laws were interpreted is based on unpublished Government and Security Cabinet decisions. The most prominent is the Absentee-property Law. After an initial attempt to make use of this law after the June 1967 War, the Israeli government suspended the use of the Absentee-property Law, because basically what it would allow Israel to do, was to call into question property-rights on an arbitrary basis. This was amended in December 1977 by the Likud government, so the law could be used again. It did not have a major impact till halfway the 1980s, when it was used to facilitate settlements in Palestinian neighbourhoods, like the Muslim Quarter, Silwan and Ras al-Amoud. The Labour government of 1992 stopped those policies, without changing the - still intact -resolutions.

During the Likud Governments several policies were adapted to incorporate East Jerusalem more into the State of Israel. First of all, a number of state institutions, including ministries were moved to East Jerusalem. Jerusalem Day, the celebrating of the unification of Jerusalem, was introduced. This holiday is on the 28 of Iyvar in the Jewish calendar. Also a Ministry of Jerusalem Affairs was created. The main project of the Ministry of Jerusalem Affairs was the ‘Jerusalem Covenant’. This document, with signatures of 1,300 local and Diaspora Jewish leaders, marked the end of the ‘Jerusalem Year’ - a celebration of 25 years of Israeli rule over a united city. In 1992 Labour abolished the ministry.

3. Jerusalem in the peace process

Since the peace process started in Madrid and especially after Labour acquiring government in 1992, one can distinguish two lines in Israel’s position regarding Jerusalem. One concerns the creation of facts on the ground, the other the position on Jerusalem in (secret) negotiations.

3.1. Giving it (partly) up?

In the Peace Treaty between Egypt and Israel, Jerusalem was not mentioned. The Israeli delegation took the view that Jerusalem and its inhabitants were not included in the autonomy plan outlined in the Camp David Agreements since they were part of Israel.

In October 1991 the Madrid Conference for Peace in the Middle East was convened by the United States and the Soviet Union. The text of the invitation to the Conference did not refer to Jerusalem. While the post-Madrid bi-lateral meetings took place between Israel and a Palestinian delegation, which, upon Israel’s demand, formally did not include representatives of the PLO or Palestinians from East Jerusalem, the PLO and Israel did conduct secret negotiations in Oslo. As a result, a Declaration of Principles was agreed upon in Oslo and signed in Washington D.C. on 13 September 1993. This text was no doubt a turning point in the attitude of the two parties on the question of Jerusalem: it was agreed that Jerusalem would not be included in the interim self-government arrangements to be agreed upon - a concession by the Palestinians, and, on the other hand, Israel conceded that Jerusalem would be one of the subjects to be dealt with in the framework of
the negotiations on the ‘permanent status’ to start in 1996. In addition it was agreed that ‘Palestinians of Jerusalem who live there will have the right to participate in the election process’ for the Interim Self-Government Authority for the West Bank and Gaza.

On 11 October 1993 Israel’s Minister of Foreign Affairs, Shimon Peres, sent a letter to the Foreign Minister of Norway, Johan Jorgen Holst. In this letter Shimon Peres stated: ‘I wish to confirm that the Palestinian institutions of East Jerusalem and the interest and well-being of the Palestinians of East Jerusalem are of great importance and will be preserved. [...]’56

As can be expected the Israeli public reacted with great astonishment to this letter. With this letter it seemed that the Minister of Foreign Affairs was ready to give up on East Jerusalem, or at least to recognise Palestinian claims to a it. Although this claim was made by the right-wing opposition, it was denied by the government.

The success of Israel’s ‘reunification’ campaign, it seems, has been so overwhelming that it has had yet another perverse effect: It has stifled public Israeli discussion of other options that might exist for the city. Notwithstanding the determination of the Israelis to keep Jerusalem united as their sole capital, the peace process has created enormous pressure to force public debate on an issue that was considered a taboo in 1993. During the Gaza-Jericho talks Rabin acquiesced, and the ‘non-negotiable’ has become negotiable.

It was deferred to a later date to avoid a political firestorm that could topple Rabin’s government. Article V of the Declaration of Principles says: ‘Permanent status negotiations will commence as soon as possible, but not later than the beginning of the third year of the interim period, between the Government of Israel and the Palestinian people representatives. It is understood that these negotiations shall cover remaining issues, including: Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with other neighbours, and other issues of common interest.’57

Since then rumours about secret negotiations on Jerusalem abound.

3.2. Or stepping up action?

Since 1992 there has been a second major change in the Israeli strategies regarding the city of Jerusalem. On the level of Israeli demographic policies, this shift can be characterised as a progressive step from firmly establishing a Jewish majority and unilateral control (1967-1991), to a more refined policy, preparing the ground for Palestinian and international recognition of permanent Israeli sovereignty over both parts of the city. Thus Israel has striven for the geographic and demographic separation of East Jerusalem from the rest of the Palestinian West Bank, and for the establishment of a stable and controllable minority inside the city boundaries.

Since 1993 there has been a closure -on and off- between the West Bank and Jerusalem. This means that West Bank inhabitants are barely or not able of getting in and out of Jerusalem. Although it is said to be done as a security measure, it has repercussions for trade between East Jerusalem and West Bank, for the freedom of worship for people from the West Bank and for those who work in Jerusalem but live in the West Bank. Furthermore, it is questioned if the closure aids security, and opposers to the closure state that it is primarily done in the light of the policies as mentioned above.
At the same time Israel has started to rescind the Jerusalem ID's of West Bank inhabitants. Up till a few years ago, the leaving of Palestinians to the West Bank was seen as favourable, for the policy to create a Jewish majority. Leaving the city was due to a housing shortage on the side of the Palestinian population. There was at that time no effort to revoke the ID's. But now, in order to facilitate the idea of a future Jerusalem under Israeli sovereignty, it is seen as advantageous to have the least amount of people carrying Jerusalem ID's as possible.

The settlement policies focused on consolidating the successful urban/suburban core of West Bank settlement communities around Jerusalem. At the beginning of September 1994, the government permitted the construction of 6,000 new flats to ease the housing shortage in the Jerusalem district. In August 1994, addressing the Knesset, Prime Minister Yitzak Rabin stated: 'This government, just like all its predecessors, believes there are no differences of opinion within this house concerning the eternity of Jerusalem as the capital of Israel. Jerusalem, whole and united, has been and will remain the capital of the Israeli people under Israeli sovereignty, the place every Jew yearns for and dreams of. The government is resolute in its position that Jerusalem is not a negotiable issue. The coming years, too, will witness the expansion of construction in metropolitan Jerusalem.'

In an interview with Ha'aretz in May of that same year, the new mayor of Jerusalem Ehud Olmert stated: 'I am relieved that a process has begun that will bring about a continuity of Jewish settlement from Neve Ya'akov southward, toward the city centre, and you will excuse me if I don't go into details.' Now a decision is being prepared to establish the 'Har Homah' neighbourhood. For this future Jewish neighbourhood 535 more dunums in East Jerusalem have been expropriated. The focus has changed from settlements in the total of the West Bank to expanding building in the Greater Jerusalem.

Since the establishing of 'Orient House' in East Jerusalem, a political (PLO) institution initiated by Faisal Husseini, the Israeli opposition has asked for its closure and the Israeli government has called upon foreign dignitaries not to visit the Orient House. This because it is seen by many as an inclination of the recognition of a Palestinian right to East Jerusalem.

According to the Declaration of Principles, the Palestinian National Authority is allowed to have eight institutions within the municipal boundaries of Jerusalem. This also is contested by the Israeli opposition.

4. Concluding remarks

In view of the Brussels situation one could see the Israeli position corresponding to the francophone position in the sense that both had a majority position in the city. What eventually made the francophones share the city and its future, was that there was a trade-off possible between their positions in Brussels and the Flemish positions in Belgium. Taking this into account and what has been stated above, the condition that could change the Israeli position regarding Jerusalem, would be a trade-off. Peace has been mentioned in this light, but the question will be if this is enough.
Notes

1 Kollek, T. 1977: 716.
5 In mid-July 1948 the Israelis had already made an attempt to liberate the Old City: Operation 'Kerem' failed.
9 Amirav, M. 1995: 44.
10 Between the 1950's and 1980, some of the countries that established diplomatic relations with Israel, established their embassies in Jerusalem. In 1980, with the acceptance by the Knesset of the Basic Law on Jerusalem, all moved. At this moment only Costa Rica and El Salvador have embassies in Jerusalem.
13 Kerr, M. 1971: 139.
15 The shofar is a traditional instrument made from a ram's horn used in Jewish ritual.
16 The Shehechiyanu blessing is spoken on new and important occasions.
17 Aner, Z.; Ben-Dov, M. and M. Naor. 1981: 162. The quote 'the heart of the matter' comes from Yonaton Netanyahu, a paratrooper at the scene.
18 Amirav.
19 Moshe Dayan (Minister of Defense), June 7, 1967, with soldiers near the Western Wall, in 1967. Ma'ariv, 8 Jun.
20 Teddy Kollek, 1977, on the tenth anniversary of the unification of Jerusalem, Ha'aretz, 15 may 1977.
21 The Jerusalem Committee is an international group of experts which advises on planning issues, installed by the Mayor of Jerusalem, Teddy Kollek.
24 For the differences between Likud and Labor governments see paragraph 3.5 page 329.
29 In 1984 the Jerusalem Institute for Israel Studies came out with a publication called: The Metropolitan Area of Jerusalem; the Urban Development of Metropolitan Jerusalem.
31 Neighborhoods in East Jerusalem are mostly called settlements by Palestinians.
33 B'tselem. 1995: 5.
35 Building rights of 15% authorize the building of 150 sq. meters on a dunam land; 200% authorizes the building of 2000 sq. meters on a dunam. A dunam is 10,000 sq. meters.
36 These will be dealt with in this chapter under Building Jewish neighborhoods, on page 324.
37 Cohen, S. 1993: 188.
38 Interview with Sarah Kaminker.
39 Interview with Sarah Kaminker.
41 Kerr, M. 1971: 363.
44 Since the Oslo-agreements the curriculum is in the process of being Palestinianized.
47 This municipality would fall under Israeli sovereignty and be inside the boundaries of its state.
55 Interview with Danny Seideman.
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**Interviewees whose responses informed this article**

Danny Seideman, lawyer and member of Fr Shalem (11-02-1996)
Sarah Kaminker, urban planner and former member of the Jerusalem City Council, (22-02-1996)
POST-1967 PALESTINIAN STRATEGIES FOR JERUSALEM?

Zakaria al-Qaq (IPCRI)

When God goes to sleep at night and wakes up in the morning, his first and last thoughts are of Jerusalem

- Islamic proverb

Introduction: The importance of Jerusalem to Muslim and Christian Arabs

Muslims hold Jerusalem, after Mecca and Medina, as the third holiest city. Jerusalem is referred to by Muslims as ‘Al-Quds,’ meaning The Holy. References to Jerusalem in the Quran along with historical occurrences make Jerusalem a sacred city for Muslims. Parts of Mohammed’s prophecies from God took place in Jerusalem and as a result mosques and other holy buildings were erected on these spots.

According to the Quran, the prophet Mohammed made his ‘night journey’ to heaven from Mecca via Jerusalem.¹ The Dome of the Rock, the earliest surviving Islamic building, situated on the Haram al-Shari in the Old City of Jerusalem, was built on the site where the prophet Mohammed is believed to have ascended and descended from Heaven. During part of the 6th century, Muslims faced Jerusalem while praying. Jerusalem served as the first qibla (prayer direction) for the Muslims due to the holy sites Abraham (referred to as a Muslim throughout the Quran) built in the city. In addition, God blessed Jerusalem and the land surrounding it and instructed the Muslims to protect this region. Jerusalem remained as the qibla for approximately three years until God instructed the prophet Mohammed to change the qibla to the city of Mecca. This shift, however, did not reduce the importance of Jerusalem according to the Islamic tradition. Therefore Jerusalem, Mecca, and Medina are all considered important cities by Muslims. This is evident in the Islamic code which requires Muslims to journey to Jerusalem as part of the holy pilgrimage to Mecca (al-Haj), one of the five pillars of the Islamic faith. After finishing the Haj in Mecca, the Muslim must complete the pilgrimage in Jerusalem by offering a prayer to God and blessing Him and Mohammed the prophet. In fact, prior to 1967, several hundred thousand Muslims visited Jerusalem annually, not only from neighbouring Arab states and Turkey but from as far away as Morocco and Indonesia.²

The Christians, too, consider Jerusalem as their Holy City, due to its rich religious associations with the life and death of Jesus Christ. The city of Jerusalem is mentioned numerous of times throughout the New Testament. According to Christian doctrine, Jesus Christ’s life, death, and resurrection took place in Jerusalem. During the time of the Byzantine Empire, Jerusalem became a place of Christian pilgrimage. The Church of the Holy Sepulchre marks the place of Christ’s crucifixion, burial and resurrection and therefore serves as a monumental religious site
for the Christian faith. This venerated church is approached by many pious pilgrims by way of the Via Dolorosa, laid out in the fourteenth century as symbolic of the route Jesus could have followed on his way to the Crucifixion.4

Numerous instances in the New Testament relate Jesus' referring to the city of Jerusalem during his revelations to his followers. In the book of Luke, Jesus said: 'And behold, I send the promise of my Father upon you; but tarry ye in the city of Jerusalem, until ye be endued with power from on high' (24:49). Clearly, Jerusalem served as a divine place for Jesus Christ during and after his life time. As a result, 32 denominations have based their respective churches in the Holy City. Furthermore, Jerusalem serves as the seat of a sizeable number of Christian prelates, including three Patriarchs, heading the Latin, Greek Orthodox, and Armenian communities. Jerusalem functions as a sacred city for a diverse range of Christian beliefs.5

1. Palestinian strategies after 1967

At the end of the June 1967 War, the Israelis annexed East Jerusalem, which had previously been under Jordanian control. Israel's main objective was to 'reunify' Jerusalem under Israeli sovereignty and to establish it as its eternal capital. The Israeli authorities thus initiated a process to transform Jerusalem into an Israeli city. The two major components of the Israeli policy were, first of all, the geographic incorporation of East Jerusalem into the Israeli territory, and secondly, the creation of a Jewish demographic majority in East Jerusalem, in order to make a re-division of the city impossible.

Therefore Israel, after the war, changed the municipal boundaries of Jerusalem to include Palestinian villages east of Jerusalem. Then the Israelis proceeded to construct settlements around the old East Jerusalem, severing the neighbouring villages from the city. In addition, a road network was constructed that served the settlements and spatially unified the western and eastern parts of the city. Further, the Israelis eradicated the Mughrabi quarter in the Old City in order to rebuild the Jewish Quarter. Alongside these policies, former Mayor of Jerusalem, Teddy Kollek (Mayor, 1965 - 1993), adopted a policy which attempted to integrate Palestinian residents into the municipal life of a 'unified Jerusalem.' In 1967, Israeli authorities issued residency status to Palestinian inhabitants of East Jerusalem by which they had the right to participate in the municipal elections and benefit from services provided by the municipality such as health insurance, social assistance, and so on. This status formally distinguished them from inhabitants of the rest of the occupied territories although it did not amount to equality between Palestinians and Israelis in Jerusalem.

A study of the days following the June 1967 War reveals a confusing time. Many demonstrations took place against the Israeli procedures. This should not be considered as part of a Palestinian strategy, but rather as a reaction towards Israeli activities. The situation can be explained as follows. The Palestinian people were waiting for the Arab nations and the Palestine Liberation Organisation to liberate them. As a result, they did not create a strategy to protect Jerusalem. Instead, they refused to deal with the Israeli authority and the municipality. Their position was that
any co-operation, or negotiation, would imply a form of recognition of Israel. To recognise Israel meant the legitimisation of the destruction of their own homes and country. But gradually, the Israeli government worked in an organised manner to rid Jerusalem of its Arab institutions and to surround the Palestinians’ lives with rules and regulations in an attempt to incorporate them into Israel. These moves were intended to reduce the chances of a Palestinian force from emerging.6

The new Israeli policies after 1967 affected virtually every aspect of Palestinian life in Jerusalem, and this fervour to integrate all Arab Jerusalemites into the Israeli version of a reunified Jerusalem led, in turn, to a Palestinian reaction to protect its own existing institutions, or to build up new ones. These institutions had to fight incessantly against the Israeli authorities in order to serve the public, and their efforts, as will be seen, left the Palestinians with mixed results. We have selected a representative sample of these institutions, including the Jerusalem Municipality, the Jerusalem District Electricity Company, the educational and health systems of Jerusalem and the Supreme Islamic Committee.

2. Jerusalem Municipality

Rawhi al-Khatib who had served as mayor of East Jerusalem since 1957, stayed on as mayor following the war. Along with his council members, he received an offer to join the Israeli municipality. He refused and began to negotiate with the Israelis to keep the Arab municipality independent. There was, however, an order to dismantle the East Jerusalem Municipality. On June 29, 1967, Rawhi al-Khatib asked the employees of the municipality to stay on in their positions as a duty to preserve and take care of their city and its residents. Following an announcement by the Israeli military reporting that the Arab municipality was dismantled, Israel faced international condemnation. The United Nations General Assembly declared the annexation of Jerusalem by Israel as invalid in Resolution 2253, adopted on July 4, 1967.7 Israeli authorities claimed that they granted East Jerusalem municipal services. In addition, they tried to gain support from the Palestinians in East Jerusalem by trying to get the municipality council members back to join the Israeli municipality. They refused, just as they refused to recognise Israel’s right to govern in East Jerusalem.

In an effort to de-politicise the Jerusalem issue, Teddy Kollek sought to encourage Palestinian participation in governing their own affairs through neighbourhood self-governing councils, designed to focus on local management in the areas of physical maintenance and planning, and education. Several of these councils were created, and although they had no real authority or budgets, they took care of dealing with many local concerns. A position was created called “Mayoral Advisor on Arab Affairs”, and was usually filled by a person of military or intelligence background. The residents used to call him a military governor of Jerusalem but not in uniform. Although this adviser served as a liaison between the municipality and the Arab population and took care of requests on behalf of residents to the municipality, his presence was felt most before municipal elections or when taxes had to be paid.8
Arabs in East Jerusalem were increasingly threatened by having to leave the city, fearing the high taxation and shortage of housing. Young couples found it next to impossible to find an apartment in Jerusalem. The Jerusalem municipality denied the Arab citizens building licenses in unfair proportion to their numbers. Jerusalemites personalities had suggested for years the necessity of establishing a Palestinian institution to develop Jerusalem, similar to the existing one on the Israeli side. But due to personal differences among Palestinian politicians in Jerusalem, this idea never saw the light of day.9

In 1986, Mr. Hanna Siniora daringly initiated the risky idea that the Arabs in Jerusalem should participate in the municipal elections, and tossed his name as a candidate. Mr. Siniora argued that there was a total vacuum in Jerusalem for close to 20 years, since the day of occupation. He wanted the Arabs of Jerusalem to play a greater role in the affairs of Jerusalem. That role was non-existent, due to the lack of Arab representation on the municipal council of Jerusalem. This gave the Israelis the opportunity to plan and implement without any legal objections. Mr. Siniora argued that participation in the elections does not undermine Palestinian sovereignty rights over Jerusalem. He differentiated between local representation, which comes as a result of tax payment, versus representation in the national parliament. For example, if somebody lived in Sweden for two years, he is legally entitled to participate in the municipal elections but not the Parliament. Mr. Siniora believed that a great number of Israeli settlements in East Jerusalem could be prevented or at least limited in number if Arabs were elected as members of the council. He suggested that the Arabs of Jerusalem could benefit from the dispute between the Jewish orthodox and the secular members of Israeli society. Arabs could form an alliance with the party of Shulamith Aloni, one of the key players of Meretz. The local Palestinian newspapers discussed the idea and dispatched their articles to the Palestinian leadership abroad. This idea of participation in the elections was a new, creative idea to exercise Arab rights and to attract attention without using violence; it was based firmly on democratic rights to vote and to be elected. Arab Jerusalemites paid taxes, but received no return and no representation.10

Mr. Siniora and other Arab candidates were to be part of an Arab list to run for Jerusalem municipal elections in 1986. At the outset, there was some support to this initiative, but the majority objected. The list was confronted with an outburst of criticism, to the point where Mr. Siniora was physically assaulted and his two family cars set on fire. Mr. Siniora recalled, "Mr. Akram Haniya, the advisor of Arafat, phoned me from Tunisia and asked me to forget the matter."11 Mr. Siniora was more concerned with the attitude of the layman in the street than the others. The failure of the initiative was due to the fact that it had been discussed within a small circle of academicians and journalists, and that was not enough to enable the initiative to take off.

This row over the idea of participation in the elections had a negative impact on the number of Palestinians who participated in the Jerusalem municipal elections afterwards. A sense of fear was dominant which prevented the public from casting their votes or nominating themselves as candidates.
In the early 1990's, a new initiative consisting of a joint Arab-Jewish Jerusalem election list was formed by Moshe Imiraf, Gershon Baskin, and Sara Kaminker, called Salaam al-Quds or Jerusalem of Peace. The leadership in Tunisia referred the matter of Salaam al-Quds back to a number of leaders in Jerusalem for an opinion. A committee of Palestinian personalities in Jerusalem was established and held their meetings in the Orient House to discuss the political and legal consequences of such an initiative. The committee members included Professor Sari Nusseibeh, Mr. Hanna Siniora, Attorney Ibrahim Kandalaf, Sheikh Hassan Tahboub, Dr. Mahdi Abdul-Hadi, the author and a few others. Only two of the members of the committee, Prof. Nusseibeh and the author were in favour of this list, but were outvoted by the majority. The joint list failed to have enough support either from the left-wing Israeli party or the Palestinians, and this effectively foiled their effort even to run in the elections.

3. The Jerusalem district electricity company

The case of the Jerusalem District Electricity Company (JDEC) - perhaps the most important Arab economic institution in East Jerusalem - represents one successful example of resistance against Israeli control up to 1986. The JDEC was the successor of a British Mandatory company, whose concession, covering 'a radius of 20 kilometres from the top of the Rotunda of the Church of the Holy Sepulchre,' dates back to the Turkish period and was renewed during the Mandate 'for 40 years.' After the 1948 War, an agreement was reached to sell half of the company to the Israelis (represented by the Israeli Electricity Company, which bought the shares of the British company in 1954) and half to the Jordanians. In 1956, the six municipalities of the Jordanian portion of Jerusalem founded the Electric Company for the Jordanian Region of Jerusalem, a public company, which purchased the concession along with hundreds of private shareholders. The Jordanian Government bought the remainder of the concession and all its assets from the original British company in 1957, and transferred them to the new electric company, which operated efficiently and was financially sound.

Following the 1967 War and unification of the city under Israeli control, the Israeli Electric Company was asked to repair the East Jerusalem power station and put it into operation. It only agreed to help with repairs, and after the electricity supply was renewed, ceased to interfere with the activities of the Arab company.

At the end of 1967, the Israeli Municipality made certain overtures aiming to taking control of the JDEC. The Municipality decided to appoint two representatives to the board of directors of the Arab electricity company, basing this move on the assumption that it was the legal successor of the Arab Municipality. Rawhi al-Khatib, chairman of the JDEC and the Mayor of East Jerusalem, actively contested the Israeli claims. The case was brought before the Israeli Court, who declared the actions taken by the Israeli Municipality as illegal, and rejected its request.

More than the issue of legality, however, was at stake. As all the board members were aware, this step was a political test case, for by agreeing to absorb
representatives of the Israeli Municipality, the Arab company would have recognised the legality of the Arab Municipality’s dispersal and of unification. None of the Board members could agree to this, least of all the deposed Mayor. Winning the case in court enabled the Arab company to achieve its goal to protect the JDEC from Israeli encroachment even without relating to the ever-present political questions over unification.¹⁶

Still, to press his political advantage, al-Khatib chose to have the letter of rejection published in the Jordanian newspapers, including a statement about how he succeeded in ‘forestalling the Israeli scheme to gain control of the Arab electric company.’ He added that the Israeli Municipality had threatened that refusal would lead to a Jewish take-over of the whole company. The publication of al-Khatib’s allegations was one of the reasons for the Israeli Government’s decision to deport him from the city soon after.¹⁷

A new threat to the company’s continued operation arose when Jewish housing began to be built east of the previous Armistice Line of 1949 in the newly-occupied territories, and the Government of Israel was asked which electrical network they should link up with, the Arab or the Jewish. Legally, it was clear this area was within the Arab concession, which was still in force according to Israeli law, since annexation could not legally alter property rights, and the Mandatory order granting the concession was still the law in Israel. Politically, however, the Israeli Government could not conceive of the notion of linking up tens of thousands of Jewish consumers to Arab electricity, and in December, 1968 demanded that the Arab company agree to allow the Israeli company supply electricity to all the Jewish housing. The JDEC, however, vigorously refused to negotiate about surrendering any part of its concession.¹⁸

Recognising the validity of JDEC’s claim, and cognisant of the fact that the Arabs could successfully appeal to the courts in Israel or even to the International Court in The Hague, the Israelis withdrew their demand after extensive negotiations, and in January, 1970 it was decided that all Jewish housing and army camps within the Arab concession would be connected to the Arab grid. At the same time, the JDEC accepted certain compromises, such as agreeing the electricity rates of both concessions would be identical and printing the company’s bills in Hebrew as well as in Arabic. It was also agreed that the two grids be joined together, but current would only be generated through the connecting line in times of emergency and only with the consent of both companies.¹⁹

Shortly thereafter, thousands of new Jewish consumers were linked up to the Arab grid. Simultaneously, the electric company pursued its plan to connect all the 12,000 Arab houses to the grid. Sales were expanded until the time came when the tremendous growth in consumption forced the JDEC to increase its generating capacity. In 1971, it received permission to import two new generators, which almost doubled its capacity. All went well, until it became clear that the Arab company was unable to meet the pressures of increased demand, not just of the new Jewish homes, but of the Arab consumers, too, who doubled and even tripled their consumption. Within two years, it again became necessary to double generating
capacity, but for certain technical reasons, the possibility of enlarging the diesel-operated Jerusalem power station was limited. The Arab company, its board finally joined by a Jewish member representing the Municipality, was faced with a revolutionary consideration to cease producing its own electricity and instead purchase electricity in bulk from the Israeli electric company. Before any decision was taken, technical faults disabled the two new East Jerusalem power units, causing a blackout in many areas served by the JDEC. Without further hesitation, the grids of the Arab and the Israeli companies were linked, and the Arab company began to buy electricity from the Israelis.20 The power was bought at a high price from the Israelis, and although the Jerusalem District Electricity Company was forced to charge identical rates to its customers as the Israelis, unlike the Israeli company, its relatively low rates to the consumers were not subsidised with government support. The more electricity that was purchased, the deeper the company got into debt with the Israelis. In addition, loans were consistently denied the company, as were requests to purchase new generators, leaving the company with no recourse but to request additional increases in the amount of power from the Israeli grid for redistribution. By 1986, the JDEC was purchasing 90% of its power from the IEC, and while the Palestinians legally retained control of the company, its dependence on the Israeli company was virtually complete.21

4. Education in Jerusalem

Following the June War, the Israeli Government instituted policy changes on educational matters affecting Jerusalem and the West Bank. Having annexed East Jerusalem, it was decided to eliminate the Jordanian curriculum previously used in the municipal schools and replace it by the curriculum and textbooks utilised in the Arab schools inside Israel, while in the West Bank, the Jordanian curriculum would be maintained, but the majority of the textbooks altered or switched to those used in the Arab educational system in Israel due to their anti-Israel or Arab nationalist content.22

Once the Israeli intentions became known in early August, 1967, demonstrations broke out throughout the West Bank, but the main focus of activity occurred in Jerusalem, where a strong protest movement got underway which was to carry on the struggle against the Israeli authorities for a number of years.

At the outset, the Association of Arab Teachers in Jerusalem called upon all teachers not to co-operate with the Israeli Ministry of Education in an act of protest against the Israeli curriculum and the replacement of textbooks, referring to these new policies as ‘a blow to the professional pride of the teachers, and to the Arab as a human being, and ... aimed at educating children in an anti-Arab spirit.’ A petition signed by dozens of teachers was sent to the Military Governor. The Jordanian government also encouraged teachers and students to boycott the schools, promising the teachers their full salaries and social benefits. In addition, the teachers refused to attend any of the explanatory meetings set up by the Arabic Department of the Ministry of Education. Requests by the teachers to re-open the Jordanian
Department of Education in Jerusalem and reinstate the old curriculum and textbooks were rejected.\textsuperscript{23}

As the first day of school approached, the Israeli Ministry of Education announced that due to 'technical difficulties,' the school opening would be postponed for two weeks. Arab public opinion was mixed over the confrontation, with some in favour of continuing the strike, but others, especially parents, claiming that the Arab children alone would be harmed by missing school, something the Israeli-side wouldn’t be too concerned about, and might even prefer. The Jordanian Department of Education in Jerusalem, as well as a number of school principals, called on their colleagues to continue the strike, resulting in the arrest of Hussni al-Ashhab, the Jerusalem Director of the Jordanian Education Department, and two school principals at the beginning of September.\textsuperscript{24}

By mid-September, a few primary schools were opened, but most of the students and teachers refused to return. The Israeli authorities placed notices calling on teachers who had not worked in the Jordanian educational system to register for placement in schools, and received a substantial response from qualified teachers and young high school graduates from outside East Jerusalem. With these registrants, the Israeli authorities managed to replace those teachers on strike, though many of the new teachers lacked both training and experience. By October 9, all the elementary and preparatory schools opened, and attendance reached 75% of the registered pupils. By the end of December, about 150 of the 300 veteran teachers had returned to their jobs.\textsuperscript{25}

The secondary schools were still closed, the delay caused both by fear of strikes and financial difficulties over the charging of tuition fees, since students in the municipal secondary schools in Israel pay tuition, while secondary schooling had been free under Jordan. Once an agreement had been reached between the Ministry of Education and the Municipality at the end of December, registration began for the three Arab secondary schools, two for boys and one for girls. Less than half the pupils turned out for registration, so one boys’ school was closed and all the pupils were concentrated at the Rashidiyah school. The school year began in January, 1968, with 489 enrolled at the Rashidiyah school (compared to 800 in May, 1967) and 300 in the Ma’muniyah girls’ school (compared with 350 before the war).\textsuperscript{26}

The strike had failed, but the dispute over the curriculum continued, mainly, of course, in the secondary schools, since on the elementary school level there were no great differences between the Jordanian and the Israeli programs. The Israeli curriculum was followed, but the absurdity of its imposition became obvious in the summer of 1968, when 4 out of 96 pupils of the Rashidiyah school passed the Israeli diploma examinations, compared with the 70 - 80% passing rate for the pre-war Jordanian exams. Parents and students clearly understood the implications: without passing the diploma exams, acceptance to universities was impossible. In the following school year, only 11 students registered at the Rashidiyah school. The others had transferred to private Muslim or church-sponsored schools, which were at complete liberty to follow their own curriculums without any interference from the Israeli government. In fact, it should be noted that only half of the pupils of East
Jerusalem were ever enrolled in the state educational system, while the rest attended private schools, which included Christian schools, preparing students for the European matriculation exams; Muslim schools, following the Jordanian curriculum and preparing students for entry into universities in all Arab countries; and schools for the children of refugees maintained by UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East). Most of these schools reopened in September, 1967, with a total enrolment of 14,000.  

Another option, apart from the private schools, was to attend other state-run schools in the West Bank, thus avoiding the tuition fees charged by the private institutions and still having the benefit of studying the Jordanian curriculum. In the West Bank the tension had subsided when experts of the Israeli Military Government in charge of affairs in the occupied territories had examined the textbooks that were initially rejected by the Ministry of Education, concluded that the unrest caused by the textbook ban had been justified, and a new committee reinstated almost all of the books unchanged. However, in 1971, the Military Governor of the West Bank forestalled the possibility of Jerusalemites studying in government schools outside of the city by issuing an order that no student holding a blue identification card (signalling residence in Jerusalem) would be allowed to study in West Bank schools. In order to obtain a non-blue identification card, it was necessary for the students and their families to relocate outside of Jerusalem. Arab demonstrations and letters written by the Arab mayors of towns in the Ramallah area were of no avail, and many Palestinians considered this requirement just another Israeli tactic to try and rid Jerusalem of its Palestinian presence.

Following the collapse of the state-run educational system in East Jerusalem, a renewed attempt was made by the Israeli Municipality to convince the Ministry of Education to permit a supplementary course of study in the upper grades which would prepare pupils for both the Israeli and Jordanian diploma examinations. With the announcement of this new program in August, 1969, the number of pupils increased to 200. At the end of the year, 5 pupils took the Jordanian examinations and all passed. No one took the Israeli examinations. By the 1971-2 school year, the number of pupils rose to 300. Yet the supplementary program was placing too much of a burden on both students and teachers, and a new joint Israel-Jordan study program was designed solely for the Palestinian students in Jerusalem. Most of this program focused on the previous Jordanian curriculum with some concentration on the Israeli one. What followed was a subtle rejection of the Israeli part of the curriculum. The teachers ignored most of the Israeli subjects, extracting only the Hebrew language lessons, and taught the entire Jordanian portion of the program. This was a clear rejection of the Israeli attempt at controlling the Palestinian curriculum.

The Palestinian concerted opposition to Israeli attempts to introduce the Israeli Arab curriculum into Jerusalem municipal schools was more than a political desire to undermine Israeli rule and unite the population in disobedience against the authorities, although Israel responded to this threat by breaking the strike in order to prove her control over the reunified city. Yet beyond political considerations, the inhabitants
had practical reasons for resisting the new program. The Israeli high school diploma was not recognised in Arab countries, the only place where a young Arab could easily gain admittance to a university. Universities in Jordan, Egypt and Syria made great efforts to attract Palestinian students by setting aside many places and offering generous scholarships. If after 12 years of schooling the student would be prevented from acquiring a higher education, why invest all this effort at all? After the results of the Rashidiyah school confirmed this situation, parents rightly feared that their children would not only be disqualified from continuing their studies, but would not even obtain a high school diploma. To those who could not afford the tuition fees of the private schools, the harsh restrictions appeared to be a deliberate means of depriving their children of an education. Some saw a larger Israeli scheme aimed at restricting education in the Arab sectors of Jerusalem, thereby promoting the emergence of an uneducated Palestinian generation.30

Moreover, Arab criticism that the Israeli Arab curriculum did not do justice to their national aspirations, language, heritage and culture contained a large measure of truth. A number of researchers in Israel concluded that this course of study showed tendencies to blur Arab nationality and required of the Arab pupil profound and extensive knowledge of purely Jewish subjects at the expense of his own culture. This was evident in the time allotted to studying various Arab topics versus Israeli ones in the Israeli Arab schools. Arab and Jewish history were studied for an equal number of hours, while over half of the history lessons in Jordan covered Arab and Jordanian history. In regard to literature, there would be no focus on Arab or Palestinian literary figures, but the pupil was required to learn many of the Jewish nationalistic writers. The most extreme example was that of religious studies. 156 hours were devoted to Bible, Mishna (Jewish oral law), and Jewish legends, while only 30 hours were allotted to study of the Quran - to which the Jordanian study program devoted 360 hours.31

By the end of 1975, it was decided to give in to the demands of the Arab educators. For the school year 1976-7, two separate study programs would exist in the upper six grades of the Arab schools; the first would adhere to the Jordanian program as used in the West Bank, with the addition of classes in Hebrew language and ‘Israeli civics,’ and the second would follow the curriculum used in Israeli Arab schools. Since it was clear that only a few would choose the Israeli study program, it was decided to group those students in one school. The Jordanian system was incorporated into all the other schools, and this is how it remains today. The Palestinians thus proved to be relatively successful in securing their right to institute the Jordanian curriculum in Palestinian schools.32

In September, 1973, the late Anwar Nusseibeh viewed the necessity of establishing a university in the Occupied Territories to serve the Palestinian students in the Occupied Territories. The number of Palestinian university students was increasing to the point that Arab universities could not accommodate the demand. Therefore, Mr. Nusseibeh initiated a meeting with Palestinian dignitaries and made contacts with the Israeli authorities to insure initial approval of the project. But his attempt faced a lot of reservations. Mr. Nusseibeh argued that the establishment of a
university will fill a real gap in the higher education level, and could see no reason why Israel would obstruct this project, claiming that the situation in the Occupied Territories was back to normal. He claimed that the mere existence of a university would embody the Arab presence in the city, Muslim or Christian, as well as demonstrate historical, spiritual and cultural linkage for Arabs. He also argued, that even if Israel might gain politically from the propaganda generated by establishing a university, the gain of the Palestinians will be greater in that they will have a university to serve the needs of their students. The practical benefits of this project have more than outweighed any political disadvantage.

The Jerusalem municipality promised Mr. Nusseibeh its willingness to donate between 1,000 to 1,500 dunums of confiscated land for a university site. Mr. Nusseibeh was not quite sure about the genuine nature of this verbal promise, but he was determined to follow it up. Mr. Nusseibeh, as a lawyer himself, worked out all the legal details, as well as the administrative aspects and the educational elements of the university. He was looking for a political decision by Jordan and other Arab states for financial support in case of approval. That approval never materialised at that time. However, his dreams became reality for his son, Professor Sari Nusseibeh, who is currently presiding as President of Al-Quds University.

In the late 1950's, Mr Nusseibeh, as Minister of Education in Jordan, had similarly tried to establish a university in Jerusalem, but Jordanian policy had always educational institutions, major medical centres and industrial activities and businesses in the East Bank rather than the West Bank. For example, during the 1960's, the Order of St. John, which originated in Jerusalem at the time of the Crusades and was well-known for its ophthalmic hospital maintained in West Jerusalem for decades, submitted a plan to erect a new eye clinic in East Jerusalem, since those most in need of its services were Arabs. The Government opposed the plan, demanding that the clinic be constructed in Amman. Only when the Order firmly refused to leave the city, and threatened not to build the clinic at all in the area if it could not be constructed in Jerusalem, did the Jordanian government relent and approve the project.

5. Health institutions in Jerusalem

During Jordanian rule of the city after 1948, Jerusalem functioned as the medical centre of the entire West Bank, eventually supporting ten hospitals with 550 beds. In the few years prior to the June War in 1967, there had been a marked expansion in hospital facilities, exemplified by the opening of a well-equipped army hospital just outside the city and by the construction of a new government hospital in the Sheikh Jarrah area of Jerusalem which was nearly completed when war broke out.

Immediately following the war and the subsequent annexation of Jerusalem, the Israeli government gradually began closing down medical clinics in East Jerusalem, starting with an official Jordanian Ministry of Health clinic in Wadi Joz. The director of this clinic, Dr. Ghalaini, as well as its employees, were scattered over Bethlehem,
Ramallah and elsewhere in their search for further employment. In addition, the Israeli authorities closed the central blood bank in the Old City, the only one in Palestine, claiming that it was working in unsuitable conditions and with incompetent management. The centre against tuberculosis, the only centre focused on fighting tuberculosis in the region, was shut down for the same reason.\textsuperscript{36}

The Hospice Hospital, supported by the Jordanian government, was the main medical institution in Jerusalem. Located in the Old City, the facility was part of an Austrian-owned church property. Prior to the war, the Austrian church had requested its property back, and a verbal agreement had been reached between the church and the Jordanian government that evacuation of the hospital would occur upon completion of a new government hospital under construction in Sheikh Jarrah, mentioned above. However, after the war this building was converted into the headquarters of the Israeli Ministry of Police, and these plans were put on hold. The Hospice kept on functioning as a hospital, but now began to feel increasing pressure from the Israeli authorities. Its budget, now provided by the Israelis, was ostensibly enough for three months, but in reality it ran out after 20 days. Medicine was also supplied by Israel, but in meagre quantities and over long and irregular time intervals. Although the hospital requested management over its own finances, this idea was rejected and external financial support was expressly forbidden over fear for financement from the PLO. In addition, Israel would not appoint new doctors, directors or employees, or allow new beds or any kind of improvement of the increasingly degenerating conditions.\textsuperscript{37}

These difficult circumstances prevailed in the 1980's, when the Hospice Hospital management met with Mordechai Gur, an Israeli army general currently serving as Health Minister, and tried to negotiate conditions to build a brand new hospital and equip it in accordance with internationally-accepted health standards, if indeed the issue was standards. The hospital officials expressed their concern and priority to serve the Arab citizens, but the talks got nowhere. There were strikes called, including protests by the Arab Christian community to pressure the Austrian church to reverse its position toward the hospital, but all in vain. Some at the time believed that the Israeli Mayor at the time, Teddy Kollek, who was born in Austria, used his influence with the Austrian government to help the Austrians in their case to shut down the hospital. It was well-known that the hospital charged very minimal fees, and that Israel was doing everything in its power to pressure Jerusalem residents to use the Israeli-run facilities, such as Hadassah Hospital.\textsuperscript{38}

The situation continued to deteriorate until Israel, in a unilateral move in 1985, declared a curfew on the Old City, sealed off the streets leading to the hospital, and evacuated the patients. The medical files and registers were either scattered in the streets or lost, making it impossible for many to obtain their medical records or important official documentation such as birth certificates. The hospital was ultimately shut down, with the Israelis citing that the hospital did not conform to Israeli standards. A big international outcry ensued against the hospital closure, but after a short time the issue became part of history. There was no follow-up committee to pursue the cases of employees or patients of the hospital after its
closure. So the employees tried to find placement in the hospitals of the West Bank, and the patients took care of themselves. No court case was ever brought to trial. The Arabs viewed the entire incident as a political move, with the aim to Israeliise the city; health was never the objective. Dr. Adnan Arafah, a leading physician in Jerusalem for the last 40 years, including service in the Hospice Hospital, questioned the Israeli position by saying: ‘The Israeli pressure on our hospitals was not due to technical problems - not at all. It’s illogical that an Israeli military general could be so keen on Palestinian health, even more so than the Palestinian physicians, and this after a war.’

After the war, the Israelis also made an attempt to occupy the premises of the Makassed Hospital located near the Mount of Olives. This move was frustrated, however, by Arab Jerusalemite doctors and citizens who anticipated the Israeli intentions and overnight installed beds, sheets and some makeshift patients onto the first floor of the recently constructed building and succeeded in protecting the facility by presenting it as an already-functioning hospital. Over the past 30 years, this institution became the cornerstone of all Palestinian hospitals, and runs the best Palestinian training college for nurses.

Following the 1967 War, Israeli health insurance (Kupat Holim) was imposed on Arab citizens of Jerusalem. This had the effect of weakening the remaining Palestinian medical institutions, whose constituency would often frequent the Israeli health clinics as long as fees which covered usage of the health services were already deducted from their salaries, and would be unwilling to pay twice. Only lately, starting in the 1990’s, Palestinian health institutions changed their policies and opted to open their services to members of Kupat Holim, as a tactical approach to restore the confidence of the Palestinian patients and to curtail to a great extent their visits to Israeli hospitals and clinics. This step became necessary in order to preserve the Palestinian health institutions, whose very existence was endangered by the lack of funds and patients. For instance, Makassed Hospital, along with Augusta Victoria Hospital located nearby on the Mount of Olives, do not receive any budget from the Israeli Ministry of Health, since they are considered non-governmental organisations. Makassed Hospital is legally registered as an Islamic welfare society, while Augusta Victoria, administered by the Lutheran World Federation for the UNRWA refugees, has the legal status of a Christian welfare society.

Numerous problems, partly due to Israeli obstacles, however, have continued to plague the Palestinian health institutions. The number of physicians in Jerusalem is not sufficient for its patients, and hospitals must adjust to this situation by bringing in doctors from the West Bank. These physicians are required to obtain a special permit to work in Jerusalem. Closures do not exempt doctors, or patients for that matter, a situation which has had an extremely negative impact on the standard of health in Jerusalem and the West Bank. In Jerusalem, a clear shortage of medical personnel exists. In Makassed Hospital, for instance, most of the heads of specialty departments, as well as nurses and technicians, come from the West Bank. This shortage of ‘blue ID’ carriers is viewed as weakening the Palestinian health institutions in Jerusalem. Even those physicians from Jerusalem with blue ID’s need
to obtain a special Israeli license to function in Israeli hospitals as well as in Makassa.\(^42\)

Raising funds has also become increasingly difficult for the Palestinian health institutions, which are required to show all sources of financial support to the Israeli government. Even foundations willing to fund such health activity are reluctant to do so in Jerusalem, fearing political repercussions from the Israelis, who tend to view support of Arab institutions in Jerusalem as making a statement regarding the status of Jerusalem and favouring the Arabs and separation. Some foreign sponsors have opted not to finance certain institutions due to their location in Jerusalem.\(^43\)

Moreover, as a result of restrictions written in the Oslo agreements concerning activities in Jerusalem, the Palestinian Authority cannot do a great deal for the Palestinian health institutions located there. Dr. Arafah tackled the point of Palestinian hospitals in Jerusalem by stating: ‘In order to be capable of developing quality health care in Jerusalem, I should be a decision-maker, in other words, have sovereignty. It means that when I want to build a very sophisticated hospital, I shouldn’t have to wait for someone else to issue me a permit for building.’\(^44\)

6. The Supreme Islamic Committee

Immediately after occupying Jerusalem in early June, 1967, an Israeli liaison officer, David Farhi, accompanied by an Israeli Arab broadcaster of religious affairs, Mr. Abu Jarir Darini, contacted Sheikh Hassan Tahboub, who was then the Director of Waqf Affairs in Jerusalem, to go together to the house of the late Sheikh Saad ad-Din al-Alami. There they found a group of Arab Jerusalemite dignitaries.

Sheikh Saad ad-Din al-Alami asked about conducting a Friday prayer immediately after the occupation and reopening of the al-Haram as well as the water wells which were the major source of drinking water for the inhabitants of the Old City of Jerusalem. A meeting was scheduled with the Israeli Minister of Defence, Moshe Dayan, and other generals who conquered Jerusalem. The meeting was attended by a number of prominent sheikhs, including Abd al-Hamid as-Sa'eh. Moshe Dayan addressed Sheikh as-Sa'eh about his requests. Sheikh as-Sa'eh responded that the whole of al-Haram al-Sharif should be immediately evacuated by the Israeli soldiers. All imams, al-Haram guards and the prayer-callers (muezzins) should be granted permits. Among the requests were that the Waqf department should be handed over by the Israelis to the Waqf as well. Moshe Dayan accepted those proposals, and also asked that the Friday prayer should be performed and 200 people should attend. He requested that order would be maintained. The Sheikh responded that in Islam, prayer is not conducted by invitation - it's not a wedding party, and is open for all worshippers. After a long session of negotiation, the Israeli side accepted the idea that the mosque would be open for all worshippers.\(^45\) As a matter of precaution for the Friday prayer, the Israelis mobilised huge numbers of ambulances and reserve soldiers, fearing that an eruption would take place after the Friday prayer. The services took place without incident.
The Islamic Waqf of East Jerusalem started to receive correspondence from the Muslim Department of the Israeli Ministry of Religious Affairs as well as the Military Governor. They requested, among other things, to read the text of the Friday sermons in advance. They succeeded once to get it directly from one of the sheikhs, and the Israeli Ministry censored some of the Quranic verses, which distorted the meaning of what God meant. The Waqf subsequently refused to hand over any future texts of the Friday sermons. Further correspondence was received from the Ministry requesting lists of names of Waqf employees, properties, lands, and so on.46

Sheikh Tahboub feared these requests and viewed it as a process of limiting gradually the domain of Waqf control. He initiated a visit to Sheikh Abd al-Hamid as-Sa'eh and said, 'Jews are exercising pressure on me in order to take over everything. I don't want to go down in history as the one from whom the Jews took the Waqf.' He requested that a meeting of leading personalities should take place to discuss this situation.47

A meeting of those leading personalities, which included a number of the Jerusalem members of the Jordanian parliament, members of the Upper House, the Arab mayor of Jerusalem, a number of lawyers and prominent sheikhs, took place in the hall of the Sharia court on Salah ad-Din Street, and issued the first statement of the Islamic Committee on July 14, 1967. This proclamation was based on the religious verdict (fatwa) which states, 'If a Muslim country were to be occupied by non-Muslims, those who are in charge of Muslim affairs should get together and elect among themselves a group capable of running their affairs.'48

The Islamic Committee was elected and declared into actual existence as a result of that meeting. The statement issued subsequent to that meeting on July 24 rejected outright the annexation of Jerusalem and reconfirmed that Jerusalem is 'an integral part of Jordan.' The Islamic Committee stated that from that moment on, it will take on the responsibility for running all Islamic affairs throughout the West Bank and Jerusalem, including the Muslim religious Sharia courts and the Waqf, until the occupation was terminated.49

The Israeli Military Governor reacted harshly by deporting a number of the signatories. Four were exiled internally to Tiberias, Safed, Hadera and Jericho, including Mr. Anwar al-Khatib and Dr. Daoud el-Husseini, and others were deported across the Jordan River. Among them was Sheikh Abd al-Hamid as-Sa'eh, the author of the fatwa, who in the early 1980's became the Speaker of the Palestine National Council (Palestinian Parliament in exile).

The Supreme Islamic Committee used to register its protests and complaints against any Israeli move that undermined the Arab-Muslim identity of Jerusalem. The Committee itself did not limit its influence to the boundaries of Jerusalem, but extended its range of concerns to the rest of the occupied territories. The Committee, in other words, assumed leadership for the Palestinian people under the occupation. The legitimacy of the Committee derived entirely in this context from the fatwa. The religious fatwa supplied the Committee with the necessary credentials to be recognised and not challenged by the Palestinians.
The Committee, in the light of this mandate, started to protest against certain Israeli activities in Jerusalem, such as excavations. The Islamic Committee was strongly against excavations around the Haram al-Sharif and in Jerusalem in general, fearing such activity would eventually change the features of the Holy City, and negatively impact the Muslim civilisation and architectural heritage. That heritage could vanish, and it was their natural right as Muslims to be proud of their heritage and to preserve it.

In particular, excavations affecting the Haram al-Sharif were considered very detrimental to the interest of the Islamic Waqf, because all properties located above or surrounding such excavations are Waqf property, historically valuable, and are also linked to the history of the Dome of the Rock itself. Many places in Jerusalem have a history of being either schools or theological centres, and of course the area in general has great holy significance as it was referred to in the Holy Koran.

The excavation work carried out by Israel around the Haram area following the June War, in the view of the Islamic Committee, was harmful to the Arab inhabitants of Jerusalem because it would threaten the structure of its houses, and was envisaged by the Committee as one of the means of putting pressure on the Arab inhabitants to evacuate their homes and subsequently their country. Many of those families who were placed under pressure were considered the oldest Islamic families living in Jerusalem since ancient times, such as Abu Daoud, al-Khaldi, ash-Shahabi, Budeiri, and al-Khatib. The Islamic Committee viewed the design and the plans of the excavation as an indication for further intention of Israel to harm the Islamic holy places. Therefore, the Islamic Committee started to protest in all media, including letters to Israeli officials and foreign diplomats in Jerusalem, reflecting their anxiety about the future of the city. They were consistently requesting the maintenance of the status quo, and that no alterations should be done in Jerusalem.50

On 22 September 1968, a number of the members of the Islamic Committee, among them Sheikh Saad ad-Din al-Alami, Ishaq al-Husseini and Sheikh Hassan Tahboub, were invited by Professor Benjamin Mazar of Hebrew University, who was in charge of the Israeli excavation team at the time, to visit the excavation site in the south-west corner outside of the Haram al-Sharif. They were given a guided tour for two hours, in which Professor Mazar explained that the purpose of this excavation was to search for the remnants of the Second Temple that was constructed by King Herod and subsequently destroyed by the Romans in 70 A.D. Furthermore, Professor Mazar gave the delegates a sequence of history of that place and what happened throughout history since the destruction of the Temple, and he showed them stone remains, which according to him were part of the Roman city Ilya, which stands for the Old City, built by Hadrian in 135 A.D.51

At the end of this visit, the delegates reported to the Committee that first of all, the excavation is taking place without a permit from the Islamic Waqf, for Professor Mazar had obtained his permit from the Israeli Antiquities Authority, and secondly, they related that the excavation exposed the foundation of al-Aqsa Mosque and that Professor Mazar's responses were not convincing and were evasive. They suggested that the Committee organise a protest to demand immediate stoppage of the work,
and appoint Arab engineers to monitor the impact of the excavations on the al-Aqsa Mosque. They also demanded that Professor Mazar and his colleagues engage in an immediate arrangement before the winter to prevent the collapse of the southern wall of the al-Aqsa Mosque. The Committee considered Professor Mazar and Israel as completely responsible for any danger that might harm any part of the al-Aqsa Mosque and the surrounding area.

On 30 September, 1968, the Committee, prepared a memo addressed to the Israeli Military Governor objecting to the excavations initiated by Israel surrounding the area of the Haram al-Sharif. The memo asked for immediate stoppage of these excavations because it violated all the Jordanian and international laws. From the outset of the occupation, the Committee, as well as the Palestinian inhabitants, were on the alert towards the excavations in Jerusalem. These excavations were always a source of friction and clashes and many times ended with unfortunate bloodshed and killing.

The excavation issue almost led to a bloodbath at the end of August, 1981. While performing repairs on a small synagogue in a tunnel north of the Western Wall, Israeli workmen for the Ministry of Religious Affairs managed to unintentionally open a sealed-up gateway in the Western Temple Mount wall, and water began to leak through. It was decided to make an opening in the gate to deal with the problem, and this led to a discovery of a large, partially-filled cistern on the other side. They drained the water out from this well, which was sitting approximately 200 meters from al-Aqsa Mosque. Sheikh al-Alami, who was a mufti and the head of the Supreme Islamic Committee, immediately contacted the Israeli co-ordinator of Arab Affairs, demanding to see the place for himself, accompanied by a team of engineers. The Israeli co-ordinator tried to buy some time, and delayed meeting the demand of the mufti. In response, the mufti declared a general strike on September 3, 1981 for all the West Bank and Gaza. The mufti decided that the Arab engineers and workers will go down to the well of water and close the gate. These engineers and workers were prevented from doing so by the Israeli army; four were injured and the rest were arrested. The day after, the mufti called upon all able-bodied workers to come to al-Aqsa Mosque. The aged mufti of 85 years of age, vowed, ‘By tomorrow, I will be the first to go down to the well and I will take hundreds after hundreds of workers and I’ll sacrifice them all until the well of water is closed and I will be the first martyr.’ When the Israeli government heard about this undertaking, the Israeli co-ordinator for Arab Affairs contacted the mufti late that night and told him: ‘The head of the police has instructed the mayor of Jerusalem to send the municipality employees to immediately close the well of water before dawn.’ In this way, the well of water was closed, the ancient gateway was resealed and the mufti managed by his confrontation to close down the subterranean synagogue being constructed near the place of the well. The mufti declined the request of the Israeli co-ordinator to call off the strike, which went ahead as planned in protest of the violation of the sanctity of al-Haram al-Sharif and al-Aqsa Mosque.

The excavation issue and the Committee’s objections against the excavations was a frequently raised issue, and never settled since the occupation of Jerusalem by
Israel in 1967. The latest confrontation occurred with the opening of the Hasmonean Tunnel in late September, 1996, which resulted in the death of 86 Palestinians and 15 Israelis, and more than 1,000 Palestinians injured.

The Committee was not limited to the issue of Jerusalem, but also extended its concern towards Hebron and the mosque there. A delegation representing the Committee met Yigal Allon, Deputy Prime Minister of Golda Meir, on 29 February, 1972, to urgently protest excavations in Jerusalem as well as the violation and disruption of the Muslim prayer services in Jerusalem and Hebron. Another issue which concerned the Committee was repeated attempts of Jewish religious schools to pray in al-Aqsa Mosque.

Another activity in which the Islamic Committee showed great interest was the preservation of historical literature, including encyclopaedias that focus on registering important historical events that took place in Jerusalem. Some of these works were preserved, compiled and written by the late Arif al-Arif, who was a member of the Committee and the first Mayor of Jerusalem under the Jordanian regime. The Committee contacted the al-Arif family to discuss the possibility of preserving that valuable information and to oversee its publication. The Committee was also very concerned about supporting the Maintenance Bureau of al-Aqsa Mosque in Cairo in order to be responsible for all technical works of the mosque. It's worth noticing that the above-mentioned bureau was responsible for the work in al-Aqsa Mosque before the war of 1967.55

The Arab Affairs Secretary of Prime Minister Levi Eshkol, Moshe Sasson, visited the mufti al-Alami a number of times in the 1960's, seeking the mufti's approval to incorporate the Sharia courts in the occupied West Bank and Jerusalem as a department of the Israeli government. Moshe Sasson used the argument that when these courts were established during the Turkish Empire, they were under an official governmental department, and remained so until the collapse of the Empire. Then the British Mandate came, followed by Jordanian rule, and the court yet remained as a governmental department. So why not continue the same arrangement under the Israelis?

The mufti objected to this line of thought by saying that Israel had enacted laws contrary to Muslim law and imposed them on the Sharia Court. For instance, the Qadis' Law (Law of Judges), adopted by Israel in 1961, requires that any judge appointed to the Sharia court must participate in a swearing-in ceremony before the President of the State of Israel, declaring allegiance and loyalty to the State of Israel as part of accepting the credentials of a judge to the Israeli court. Islam, however, does not recognise any separation of religion and state, and thus prohibits a Muslim under foreign rule from swearing allegiance to a non-Muslim ruler. Further, the judges were required to adjudicate matters of Muslim personal status, such as the laws of marriage, divorce and inheritance, not according to the Sharia laws in use in Jordan, but as these laws had been amended in Israel, a non-Muslim state. This also violated Muslim religious law, which requires any Muslim residing in a state not under Muslim rule to maintain an independent juridical system.
So when Moshe Sasson responded to the mufti’s objections by asking, ‘What do you think of the existing judges in the Sharia courts currently under Israeli supervision?’ the mufti al-Alami replied, ‘Tell those judges that all of them are infidels and not Muslims and each of them rule not according to the regulation of God, and by swearing allegiances to the head of the State of Israel, he is not Muslim. This is my fatwa.’

However, in 1968 an interesting court case arose, whereby an East Jerusalem resident applied to the Sharia court in Jaffa for its verdict. Since Israeli law placed Jerusalem within its area of jurisdiction, and the religious court in East Jerusalem established by the Islamic Committee actually had no status in Israeli law, the Jaffa court decided that the application was within its jurisdiction. The Supreme Islamic Committee denounced this move, considering it a new tactic by the Israeli government to undermine its activity, and said that the Israelis ignored the fact that there has been a Sharia Court in Jerusalem for the last 1400 years and it functioned according to the rules of the Islamic Sharia. The Islamic Committee considered the rules and verdicts of the Jaffa Sharia Court as neither legitimate nor binding upon the petitioners, because they contradicted the spirit and letter of Islamic Sharia rules. This Jaffa Sharia Court was not qualified for judging between Muslims, with its judges who vowed allegiance to the President of the State of Israel in contradiction to the rules of Islam. The Islamic Supreme Committee viewed the interjection of the Jaffa Sharia Court as a political decision rather than a purely judicial matter, for the purpose of serving the policies of the occupier and having nothing to do with Islam and its laws. So the Committee considered decisions of that court as null and void, and called upon the people not to take their cases to this Jaffa Sharia Court.

In time, though, arranging legal matters by way of unofficial procedure gradually took hold. Israel would ratify documents issued by the qadi of East Jerusalem in recognition of the qadi’s religious authority, even if the Sharia court’s judicial authority was not recognised by Israeli law. In addition, acts of the East Jerusalem Sharia court would be confirmed by the Jaffa court, which accepted the religious authority of the Jerusalem qadi.

The Israeli Minister of Interior and Police, Eliahu Sasson, received a protest from mufti al-Alami regarding the key of the Moroccan Gate leading to al-Aqsa Mosque. The key had been taken from the Muslims by force in September, 1967, after officials of the Military Rabbinate tried one morning to enter their office next to the Moroccan Gate and found the gate locked. The key was confiscated and never returned. The mufti used to demand the key back from the Minister. But the Minister would argue, ‘Welcome to the negotiating table to solve all the problems between us.’ The mufti would reply, ‘I am not prepared to sit at a negotiating table to negotiate the key of my Mosque.’ Moreover, the Islamic Committee dispatched telegrams to Menachem Begin and Ezer Weizman and foreign diplomats regarding the attempt of some Israeli workers who started to paint the Moroccan Gate, which is one of the gates of Haram al-Sharif. The Israeli workers functioned upon instructions from the Israeli army. The Islamic Committee considered this act of painting as an aggression on a Muslim property, and so demanded immediate stoppage of the
work. Mufti al-Alami disclosed on 28 September, 1978 that the Islamic Waqf tried more than once to make the necessary repairs, especially on the Moroccan Gate, but the Israeli army would always prevent them from carrying out these repairs. However, the Islamic Committee convened its meeting at the location of the repairs, demanding immediate stoppage of the work. The Israeli army continued with the work without regard to the Committee's protests.62

The Islamic Committee also became interested in the affairs of the Palestinian prisoners in the Israeli jails. The Committee sent letters to the Israeli Military Governor of the West Bank complaining about the maltreatment and the necessity of securing medical care for the prisoners.63

The Islamic Committee denounced the attempts of confiscation of huge areas of land by the Israeli authorities both inside and outside the Old City. These measures by the Israelis, they insisted, would only foster the Arabs to stick to their Holy City and prevent any attempt of Israeliisation.64

The Islamic Committee also stood firmly against the Israeli decision of annexing Jerusalem to Israel. It sent a letter to that effect to the Secretary-General of the United Nations protesting the massive demolition of inhabited quarters in the Old City and they demanded from the Secretary-General to send an inquiry team to inspect the situation. Immediately after the occupation of Jerusalem, Israel demolished complete quarters, totalling about 400 houses. 135 houses were in the Moroccan quarter. The statement to the Secretary-General was signed by Muslims and Christians alike, reminding of the danger of the situation and asking to stop all measures by Israelis to change the features of Jerusalem.65

The Islamic Committee was also concerned about maintaining the Arab identity and culture in Jerusalem and to prevent any emerging immoral activities in the city. They protested to the Israeli Military Governor against the proliferation of night-clubs and wild cafes, some introducing striptease acts, open all hours of the night, as well as the troubling emergence of prostitution, gambling and drug use, all taking place under the eyes of the Israeli authorities and receiving permits from the municipality. The women of Jerusalem joined the campaign of protest by writing to the Israeli Ministries of Interior, Religion, and Police, saying that Jerusalem as a city in its entire history never witnessed such a wave of immoral collapse, and considered this kind of move as being meant to upset the morals of the Arab inhabitants of the city. The Turkish Empire, the British Mandate and the Jordanian government never permitted at any time such immoral activities. They reminded the authorities that this city was holy for all religions and should respect the feelings and culture and identity of its citizens.66

The Supreme Islamic Committee, then, waged protests and dealt with an impressive array of issues that affected the Palestinian community of the West Bank and Jerusalem, encompassing Waqf affairs and the Sharia courts, excavations of the Haram al-Sharif, maintenance of the Holy Places, historical archives, social mores, the gradual taking over of Hebron mosque and the city of Hebron, land confiscation, uprooting of trees of Palestinian farmers, prisoner maltreatment, deportations of Palestinians, and so on.67
7. Analysis

The Supreme Islamic Committee was probably the most important institution in the formulation of the Palestinian position. The Committee was the most clever approach to confront the Israeli intentions to expand the boundaries of Jerusalem, linking the services of East and West Jerusalem together, and announcing the annexation of Jerusalem. The Supreme Islamic Committee was a response based on solid foundations of Islamic law that was acceptable to the Muslims. The fatwa states that Muslims should choose someone from amongst themselves, in the absence of a Muslim ruler, to run their affairs, and so the Committee became the launching pad for this approach.

Israel was not prepared to face such kind of problems. The clever approach of the Committee based on the fatwa of Sheikh Abd al-Hamid as-Sa'eih was not worldly in running the affairs of the Muslims, but rather, possessed an entirely religious dimension.58

The fatwa and the subsequent Islamic Committee was not objected to or rejected by the Christian clergymen in the Occupied Territories. The Christians didn't object to the establishment of the Committee due to their excellent relationship with Sheikh es-Sa'eih, and the Christians felt that they needed the protection because of the feeling of danger surrounding them. The Islamic fatwa didn't face any sort of Arab or Western reservations either.

One of the main concrete results of the Committee was maintaining the same system of Waqf in Jerusalem and the West Bank. The Islamic Waqf in Jerusalem remained part of the general Waqf administration and under the auspices of the Islamic leaders in Jerusalem, and enjoyed complete recognition from north to south with this arrangement. However, Gaza was not part of the plan, due to the lack of interaction between the West Bank and Gaza for 19 years, from 1948 until 1967.

The second important result of the Islamic Committee that the Sharia Court continued to function as usual until today and no Israeli domination was imposed on the Sharia Court. A third result was political. All the members of the Islamic Committee were members in a secret committee called ‘The First National Guidance Committee.’ Fourth, the cultural aspect, relating to the fact that the Committee assumed the job of repairing al-Aqsa Mosque after it was burned in 1969.

The Islamic Committee of 1967 understood the lessons and the importance and the effect of the religious fatwa of the Supreme Islamic Council of 1921, established during the early days of the British Mandate. The Islamic Council of 1921 tried through its fatwa to mount social and religious pressure against operations of selling Arab land to the Zionists. A great number of Islamic clergymen at that time persuaded as-Sa'ed Rasha Rida to issue a fatwa to publicise the names of every person who sold land to Jews. Amin al-Husseini, the mufti of Jerusalem and head of the Supreme Islamic Council, and other prominent Muslim religious leaders roamed the country to expose the sellers of the land and the brokers as well.
The establishment of the Supreme Islamic Council of 1921, according to Sir John Shuckburgh, the head of the Middle East Department in the Colonial Ministry in 1926, was one of the most successful steps in Palestine, because this step gave Muslims practical autonomy regarding Islamic affairs. This system functioned in an acceptable way and contributed to a great extent in a kind of reconciliation between Muslims and the Mandate authority which had Zionist tendencies and was popularly unwelcome.69

Israel tried to repeat its experiments by attracting the Islamic religious leaders after 1948 through appointments of some sheikhs to be in charge of local mosques as imams, muezzins and preachers and by payment of their salaries. The Israeli government achieved more control on the Islamic leadership in 1961 by enacting the Qadis’ Law and by commissioning a governmental committee to supervise and determine the appointments.

By this law, Israel was able to marginalise the religious power as an independent national political force. Israel continued to ignore the protests on these measures and managed to insure the participation of the Muslim judges in the Israeli anniversaries of Independence Day. As part of this polarisation tactic, Israel didn’t appoint a Palestinian mufti in Israel. This move led to a number of results. Without positioning a recognised personality at the top of the Islamic religious pyramid, Israel made it next to impossible to have a leader who could unite the judges in their scattered geographical areas against Israeli secular authority. In other words, the absence of an imminent Muslim religious leader who would influence the views of the Arab minority and unite the attitudes of the judges to speak in one voice, especially concerning important issues politically or religiously that concern their society, became very unlikely.

The mufti is the only authorised person capable of interpretation of the Sharia matters and the absence of the role of the mufti in Israel led to the rigidity of the Islamic personal status law. Israel resisted the idea of the opening of the Islamic Waqf schools as part of its controlling policy on the Islamic society. All these factors weakened the role of Islam in Palestinian society. For example, the Islamic society was selected for special treatment by Israel in order to pre-empt Palestinian political aspirations inside Israel. As a result, Muslims were subjected to discriminatory practices, which were never, for example, imposed on the Christians. The Israeli Custodian of the Absentees freed the property of the Roman Catholic Church, and they were allowed their own educational system, including the running of their own private schools. In addition, the Christians were allowed to have their own Church Courts and the right to appoint their own judges independently from Israeli interference.70

After 1967 the Supreme Islamic Committee installed other sister organisations that remained effective but separate from the Committee, such as the Waqf, the Sharia courts, the committee for repairing al-Aqsa Mosque, and so on. Although the Supreme Islamic Committee lost a great deal of its strength by the Israeli decision on September 24, 1967 to deport Sheikh Abd al-Hamid as-Sa'eh, it managed to restore some of its importance in 1969, after the burning of al-Aqsa Mosque. All attention
was focused on this committee as the responsible body for the affairs of Muslims in the Occupied Territories. The Committee also managed to play some political roles such as its condemnation of Sadat's visit to Jerusalem.

In time, Jordanian interference started to infiltrate the functioning of the Committee. This Jordanian influence was desired by Israel, according to the opinions of those who were following the activities of the Committee. Dealing with Jordan, according to the Israeli way of thinking, was far better than other uncontrollable and undisciplined leadership. At the same time, the Committee became the centre of interest to the Palestine Liberation Organisation for many reasons including the Committee's respected status, the fact that it derived its legitimacy from being Islamic, in Jerusalem and on the front-line under occupation. For example, Sheikh Saad ad-Din al-Alami gave a fatwa to kill President Assad of Syria due to the latter's political dispute with Arafat. Therefore, there was increasing interest by the PLO to rally the attitudes of the Islamic Committee to its favour and to benefit from its status. The PLO managed to add extra members to the composition of the Islamic Committee, such as Faisal al-Husseini and some others. The purpose behind this kind of composition was to make the Islamic Committee voice the official position of the PLO.

In this way, the Committee lost the momentum since its mere creation was primarily a local initiative established in response to the critical necessity of facing the new circumstances of Israeli occupation rather than based on external instructions. In time, the increasing number of political players created a kind of necessary balance of power within the Islamic Committee, which resulted in a paralysis of its political decisions. For example, if there was to be an understanding between Jordan and the PLO, the Committee would behave accordingly. But if conflict occurred between the two, there would be an immediate impact on the members of the Committee, and consequently, its determinations.

This fractionalisation was compounded by repeated Israeli attempts to frustrate the sheer existence of the Supreme Islamic Committee, which never stopped. They adopted a number of tactics to achieve their goal, such as threats of deportation and assassination, frightening the members, and other means. Therefore, members of the Committee started to calculate pretty well before they would be involved in certain decisions or tracks of action, especially since a number of Committee members were deported out of the country. The Islamic Committee tried to adapt with the changing circumstances but its role retreated under the leadership of Sheikh Saad ad-Din al-Alami, despite some of his courageous and confrontational attitudes during the cases of attack on al-Aqsa Mosque. Sheikh al-Alami lacked the charisma of his predecessor, Sheikh Abd al-Hamid as-Sa'eh. The latter had the combined gift of being religious and a politician at the same time, and had the ability to run the affairs without creating antagonism against him.

Sheikh al-Alami was trying hard to be another Amin al-Husseini, who dominated the Arab political scene as mufti from 1921 - 1948, since he had similar credentials of being a mufti, and proceeded to add the word Supreme to the name of the Islamic Committee to be exactly in the same position as in the days of Amin al-
Husseini. But Sheikh al-Alami forgot the fact that time and circumstances had changed. The Islamic Committee turned out to be a format rather than a forum for deeds. People stopped paying attention to its meetings. Even some members of the Committee ceased to care and failed to attend its meetings. The Committee turned out to be a mirror of conflicting attitudes of the parties in dispute, namely, Israel, Jordan and the Palestine Liberation Organisation.

In the early 1990's, members of the Islamic Committee tried to enact an internal system that would enable the election of the members and the head of the Islamic Committee. The Jordanians believed this move was an attempt to disengage from Jordan and take over the affairs of the Waqf in Jerusalem. It is known that the Jordanian decision to disengage itself from the West Bank in 1988 specifically exempted the Islamic holy places in Jerusalem. So the Jordanians interpreted this act of the Committee as a further religious disengagement from Jordan.

When the Palestinian Authority began to function after the Oslo agreements, the head of the Islamic Committee, Sheikh Hassan Tahboub became the Minister of the Islamic Waqf in the PA. The new political reality of the PA created a lot of problems, such as the existence of two muftis - one appointed by Jordan and one by the PA. The Committee's prestige declined from being a major player in Jerusalem after 1967 into an almost irrelevant formality.

8. Concluding remarks

Jerusalem, after the war of 1967, was not given a special status by the Palestine Liberation Organisation and its different factions. In the PLO's view, Jerusalem was considered part of the Occupied Territories, so there was no differentiation between one city and another. At the same time, Israel became very heavily focused on Jerusalem. For example, every member of the Executive Committee of the PLO had a special department or portfolio, but none of them assumed the portfolio of Jerusalem until 1994.

Meanwhile, Jordan was claiming its rights in Jerusalem through its control of the Waqf and other institutions. Jordan always felt like a trustee of Jerusalem, and this arrangement of exempting the PLO from responsibility over Jerusalem suited the PLO leadership. The PLO was not interested in opening the 'battle' for Jerusalem, and let Jordan engage in tackling the issue of Jerusalem. In other words, there was a Palestinian implicit recognition of Jordanian responsibility over Jerusalem. The PLO never tried to carry the burden of this responsibility until the last few years and the assumption of Palestinian authority as a result of the Oslo agreement in 1993.

It's worth observing that in the literature of the PLO there has never been any special reference to Jerusalem as a city significant in itself. Jerusalem was always mentioned in terms of its linkage to an independent Palestinian state and as its capital, but not as a city that possesses a tremendous historical, religious and civil heritage. Jerusalem usually was mentioned in Palestinian political speeches with reference to its religious dimension, rather than its geographic and territorial reality, by saying 'al-Quds al-Sharif.' This phraseology is totally wrong politically and is a religious
illusory subject in a wide range of interpretations. It lacks any specificity in defining such an important concept.

Some Palestinians argue that they didn't benefit from their experience in dealing with the Israelis in 1948. Yet Israelis, on the contrary, had gained great experience from 1948 about how to handle the Arab issues. The awakening of the Palestinians over the issue of Jerusalem started very late. It took expression in holding conferences, 'cosmetic' engagements in repairing some buildings in the Old City and letters of protest. However, these activities were merely, as an Arab proverb states, 'a cry in a deep valley' rather than a well-structured strategy to be followed.

Palestinians feel that one of the greatest errors of the Palestinian leadership is postponement of discussing the issue of Jerusalem until final status talks occur. They feel that Israel took ample time to create facts on the ground in Jerusalem. Palestinians probably preserved the theme of 'Jerusalem is the capital of a Palestinian state' but nobody among the Palestinian leadership, including those who are in charge of the portfolio of Jerusalem, are capable of defining Jerusalem as the capital. Those officials raise the slogans and stick to them, but do not consider their practical implications. The absence of a strategy created a state of chaos. Academicians and other experts were denied the opportunity to crystallise a possible strategy based on deep research and thinking. The issue of Jerusalem was left to certain institutions which were keen to raise funds, and used Jerusalem as their rallying cry. These institutions began to be controlled by their sponsors, rather than taking on the responsibility to delineate a clear national agenda towards this very important issue.

Palestinians believe that perhaps they gained only where the Israelis erred, such as the fact that they did not choose to take over or at least partition al-Haram al-Sharif, as they have done with the Ibrahimi Mosque in Hebron. Part of this reluctance on the Israeli side is due to Jewish religious beliefs regarding access to the Temple Mount.72

The authorised, semi-official Palestinian institutions which tackle the issue of Jerusalem are incapable of confronting the Israelis, due to the shortage of highly-qualified people in all aspects such as legal, geographical, and so on. The Palestinian leadership should work hard at recruiting a group of highly qualified people that prepare studies and provide the Palestinian negotiators with means, methods and strategies regarding the issue of Jerusalem. This group should not necessarily be all-Palestinian; we may shop for this kind of expertise through Arabs, Muslims and Christians and not necessarily Palestinian or who reside in the Palestinian territory.

This kind of work has a huge collective function. Slogans by themselves are not sufficient. There are a number of Israeli proposals on Jerusalem ready for negotiating and supplemented with maps as well.

There was no special Palestinian position towards Jerusalem. The word 'strategy' hasn't formed part of the Palestinian mentality up till today. There were reactions or poetic imagination, but by no means was this a strategy. The absence of a strategy means there was no unified position for Palestinians or Arabs. Regarding the Palestinians who remained under Israeli occupation, they didn't take the issue of separating Jerusalem from the rest of the West Bank seriously. The Palestinians
under occupation did not envisage the dangerous situation that faced Jerusalem and the implications of implementing the Israeli laws in the city. Neither did they envisage that it would negatively affect the status quo and their security in the next thirty years. But they were strongly under the conviction that all these laws and changes done by the Israelis were null and void and would change because it was not based on logic of rights. Moreover, the Palestinians didn’t think that they would be forced to confront the reality of Jerusalem as it stands today.

The Palestinian interest in general in Jerusalem has always been present, but what is absent is the scientific approach to the problem. Efforts regarding Jerusalem were always scattered; no more proof is needed besides the reality of the absence of a clear Palestinian position towards Jerusalem and even other issues like water, borders, and so on. Palestinian thinking about these issues started very late, and practically became impossible to implement in accordance with Palestinian’s desires. Therefore they had no choice but to implement what the Israeli practical reality dictated to the Palestinians.

No Palestinian strategy exists from either the level of planning or action that can preserve Jerusalem. On the contrary. The reality is that the Palestinians are taken by the Israeli winds and fall according to the Israeli will in the place that the Israeli want. For example, there is no Palestinian or Arab plan up to this moment to purchase lands in Jerusalem and solve the housing crisis. There is no special attention towards Jerusalem, but it is treated as any other city in the world and as any housing crisis anywhere and who owns the land receives the grants for building. Jerusalem has not yet been treated as a real and potentially explosive political problem.

When we look at Jerusalem, we find that most of the land is either in the hands of the foreign churches or Israelis who took over that land in co-operation with Arab collaborators who turned over the land whether they owned it or not in all the best areas of Jerusalem. Palestinians did not engage in purchasing these lands from the beginning or promoting serious institutions in the city. For example, establishing a university in Jerusalem was a necessity in the early 1970’s, but the Palestinians, instead of insisting on this university in this city, opted to promote and enlarge Bir-Zeit University, which became the Palestinian educational incubator.

Finally, I would like to agree in my final concluding remarks with Professor Sari Nusseibeh, a prominent Palestinian intellectual and renowned Jerusalemite, who related to me: ‘Jerusalem is terribly neglected in all respects. The Old City has turned out to be a haven for drug addicts. Jerusalem moving into the hands of the Israelis has become a foregone conclusion. Arabs will not learn this lesson until the passage of hundreds of years. It is unfathomable that we will achieve anything in these negotiations. As I told one of my friends who asked me about the file of Jerusalem, Palestinians should confront the fact that nothing has remained from Jerusalem except that file, which means a few papers.’
Notes

1 The Quranic passage (17:1) reads: ‘Glory be to Him who made His servant go by night from the Sacred Temple to the farther Temple whose surroundings We have blessed, that We might show him some of Our signs. He alone hears all and observes all.’ The Sacred Temple refers to Mecca, and the farther Temple, to Jerusalem. This translation is from: Dawood, N. J. 1990. The Koran. England: Penguin Books: 197.

2 This term may be translated as ‘Noble Sanctuary.’ This spot is also sacred to the Jews, who believe this area is the Temple Mount.


10 An interview with Mr. Hanna Siniora on May 19, 1996 in Jerusalem. Mr. Siniora started his career as a pharmacist, then became a journalist, editor and publisher. In the late 1970’s and 1980’s, Mr. Siniora was a leading Palestinian politician in the Occupied Territories, and conducted a series of negotiations with the American Administration when talks between the Americans and the PLO were prohibited by the Americans. Mr. Siniora is still playing an important role as a member of the Palestinian Ministerial Committee for Jerusalem that convenes weekly every Tuesday under the chairmanship of Chairman Yasser Arafat. Mr. Siniora is currently Chairman of the Palestinian-European Chamber of Commerce.

11 Same.

12 The author of this research was part of the deliberations of whether the Palestinians of Jerusalem should participate in the Jerusalem Municipal Elections under Israel. The committee was appointed to advise the Palestinian leadership in Tunisia about the implications of the legal, political, and Palestinian domestic opinion about this municipal election issue.


15 Interview with Abed Abu Diab, who worked with the Jerusalem District Electricity Company since the 1960’s. He served as Director of Personnel, Director of Customer Relations and General Inspector. The interview took place on 11 April, 1996. See also: Benvenisti, M. 1976: 191.


33 This account of Al-Quds University initiative is based on the personal documents and files of the late Mr. Anwar Nuseibebeh, a leading Jerusalemite. He was a Jordanian Minister of Education and Minister of Defense, and held several other governmental portfolios. He was also a Jordanian ambassador to several countries including United Kingdom and was also Governor of Jerusalem. The author of this research was able to review Mr. Nuseibebeh’s personal papers thanks to the generous assistance of his renowned son, Prof. Sari Nuseibebeh.
36 Interview with Dr. Adnan Arafah, Jerusalem, 23 June 1996. Dr. Arafah served as chief physician at Hospice Hospital, Jerusalem and currently is director of the Arab Health Center in Jerusalem.
37 Same.
38 Same.
39 Same.
40 Same.
41 Same.
42 Same.
43 Same.
44 Same.
45 Interview with Sheikh Hassan Tahboub who was then the Director of the Waqf Department of Jerusalem in the Jordanian Waqf Ministry. Currently, he is the Minister of the Waqf in the Palestinian Authority. The interview took place in Jerusalem in March, 1996.
46 Same.
47 Same.
48 Interview with Mr. Mohammed Nuseibebeh, a Jerusalemite personality and member of the Supreme Islamic Committee and currently Chairman of the Board of Trustees of Al-Quds University, Jerusalem, April 22, 1996. See also: Sheikh Saad ad-Din al-Alami (ed.) [n.d.] The


Al-Alami. [n.d.]: 135.

Al-Alami. [n.d.]: 42 - 44.


Al-Alami. [n.d.]: 179.


Al-Alami. [n.d.]: 33.

The carrying out of such operations as the cleaning or repairing of a Holy Place can be interpreted as implying the right of exclusive possession of the portion of the structure in question.


Al-Alami. [n.d.]: 126-127.


Al-Alami. [n.d.]: 327-328.

An interview with Engineer Ibrahim Daqaq, Jerusalem, April 21, 1996. Mr. Daqaq is a member of several committees in Jerusalem, including the Supreme Islamic Committee and the Al-Aqsa Repair Committee.


Dumper, M. 1992: 75 - 78.

Interview with Engineer Ibrahim Daqaq.

Though the Temple Mount is perhaps Judaism’s holiest place, it is precisely the sanctity of the area which has traditionally prevented the Jews from entering the Temple compound, partly out of the fear of treading on the Temple’s innermost sacred place, the Kodesh haKadosh or Holy of Holies, reserved solely for the High Priest, and also because the Jews do not now have the religious means to purify themselves to stand in this holy place.

Interview with Professor Sari Nuseibeh, currently President of Al-Quds University, on May 8, 1996.
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TERRITORY AND IDENTITY
INTRODUCTION

Jerusalem is a city of many contrasts. It is both a historical and symbolical city, revered by Muslims, Christians and Jews. Ethno-nationally, culturally and socially, however, it is fundamentally divided between different identity groups: Jews and Arabs, Haredi (ultra-Orthodox) and secular Jews, and lower- and upper-class socio-economic groups. In recent years a new type of group identity has developed, reflecting the tension between local communities striving to protect environmental assets and politicians and business people seeking to promote urban and economic development.

Identity groups single themselves out in a dual way: they note the core experiences, values, norms, memories and aspirations that unite their members, and they identify the features that distinguish them from the others. Identity formation is thus associated not only with positive identification, but also with reactive act that distinguishes between ‘our experience’ and ‘their experience.’

The construction of group identity, is associated with long, medium and short range processes. From historical perspective group identity is linked with a mythical past, religion, language, and culture. The historical identity is not static and tends to change over time due to the accumulation of medium range experiences, norms and values. Finally, recent social and political events tend to further reshape the nature of group identity by endowing it with new meanings and symbols. Thus for instance, social and political struggles might remould the nature of group identity, providing it with new experiences and myths. Identity construction, in other words, is associated with historical developments, everyday experiences and recent political events.

This essay focuses on the role of recent political events and their impact on the reconstruction of identity. Specifically, it explores how political and social struggles over territories reshape the nature of group’s identity. The study explores the relationship between territorial struggles and identity among four distinct groups in Jerusalem: ethno-national groups (Israeli-Jews and Palestinian-Arabs), Cultural groups (ultra-Orthodox Jews, known in Hebrew as Haredim, that is zealots, and non-Orthodox Jews), ethno-social classes (advantaged groups and disadvantaged groups, mainly of Oriental descent, known in Hebrew as Mizrahim), economic and ecological groups (the business sector and residents of the city).

1. Ethno-national identities: Israelis and Palestinians

The Palestinian Arab population, which counted 170,000 people (28 percent of the city’s population) in 1994, lives in the eastern section of the city. The Jewish population, which amounted to 406,000 people (72 percent of the city’s population),
resides in the western part of Jerusalem (the part that has been Israeli since 1948) and in several neighbourhoods in eastern Jerusalem (see Map 1).

The ethno-territorial separation is almost total and with the exception of a small number of Jews in the Muslim and Christian quarters there are no areas of mixed population. However, because the Israeli government has built Jewish neighbourhoods in the eastern part of the city a chequered pattern of urban residence has developed wherein Jewish enclaves bordering on Arab enclaves (see Map 2).

Palestinian Arabs and Israeli Jews conceive of territory as a strategic asset and a symbol of historical presence and nationhood. National identity is inseparably linked to holding on to the land and is manifested in conflicting claims to the same territory. The State of Israel seeks to maintain all of Jerusalem under its sovereignty. The Palestinians wish to see East Jerusalem as the capital of independent Palestine. To achieve its goals, the State of Israel expanded the municipal boundaries of West Jerusalem after 1967 by 70,500 dunams, from 38,000 to 108,500 dunams (8,500 to 27,500 acres) and expanded the Israeli law, juridical system and administration to East Jerusalem. In so doing, the State of Israel annexed to West Jerusalem the 6,500 dunams of East Jerusalem and another 64,000 dunams around East Jerusalem all of which previously controlled by Jordan. Of the 70,500 dunams incorporated into the city, the Israeli government expropriated 24,000 dunams to build new Jewish neighbourhoods. These neighbourhoods, which encircle the city and delineate its new boundaries, are home to 170,000 Israeli Jews, that is, one-third of the Jewish population of the city.

To curtail Arab growth and expansion, large tracts of Arab land, as yet undeveloped, have been zoned as ‘green areas’ (See Map 2). In these green areas the construction is prohibited. Nevertheless, two large Jewish neighbourhoods in the northern and southern sections of the city were built on green areas. Currently, the Arab population occupies only 13 percent of the city’s area. The Jewish neighbourhoods enjoy a much higher level of services than the Arab neighbourhoods; it is estimated that only 4 to 5 percent of the municipal budget has been directed to Arab neighbourhoods.

In the struggle against the Israeli efforts, the Palestinians developed an endurance policy of holding to the land known as sumoud. This strategy may partially explain why the Palestinian population more than doubled between 1967 and 1994, from about 70,000 to 170,000. Within the Palestinian residential areas a plethora of grass roots organisations have formed; some of them provide services, others are engaged in the protection of human rights, and still others represent religious and national organisations.

As part of this struggle, holy places and historic sites have been transformed into major national symbols, serving as a statement of resistance and political control. The Western Wall, the mosque of al-Aqsa, the Church of the Holy Sepulchre, and other sites that dot the city landscape serve as important symbols of ethno-national and religious identity and are everyday testimony to contradictory religious-cum-political claims.
Map 1: Distribution of population by religion

Distribution of Population by Religion
1990

Jews ●
Moslems ▲
Christians ▽
each dot represents 300 persons
Municipal boundary ———

Source: The New Atlas of Israel, Survey of Israel; The Hebrew University of Jerusalem. Tel Aviv 1995
Map 2: Jewish and Arab residential areas
2. Cultural identities: The Haredim (ultra-Orthodox) and the non-Orthodox population

Haredi Jews, who counted 128,000 in 1994 (22 per cent of the city’s population), live mainly in northern Jerusalem. The Haredi population is characterised by strict adherence to religious commands, voluntary segregation and special dress: black gowns and black hats. Members of the community define themselves as anti-Zionist, do not serve in the armed forces and some of them boycott the election to the Israeli Knesset.

The Haredim live in segregated neighbourhoods at the northern section of the city. The core of the Haredi area is associated with Mea Shearim, a neighbourhood built in the late 19th century in the north-eastern section of the city to accommodate ultra-Orthodox (haredi) Jews. Over the years, the haredi population has spread steadily from its core in Mea Shearim to adjacent neighbourhoods, developing a contiguous haredi territory stretching from Mea Shearim in the east to Har Nof in the west.

The contiguous Haredi territory in north Jerusalem sets off the Haredim from the rest of society. Within their confines the Haredim have managed to develop their own separate schools, maintain their dietary laws, control the relations between the sexes, socialise the younger generation, close roads for traffic on Sabbath and create a separate cultural identity (see Map 3).

The principal Haredi spatial symbols are religious institutions: synagogues, yeshivas, and ritual baths. Other symbols are associated with spatial division by gender, the closure of roads and businesses on the Sabbath and Jewish holidays, and signs and advertisements with religious content. The Haredim have thus created a defended territorial enclave within which they can produce and reproduce what they regard as the ‘holy community,’ without being threatened by behavioural patterns and conduct of the surrounding secular society.

The reason for the spatial segregation is cultural. The Haredi community views the secular nature of the city as a threat to its existence, one that endangers it and imperils its way of life. The influences of the modern way of life are regarded as threatening the sacred space that the Haredi community is trying to fashion for itself. Therefore, the Haredim strive to build walls and fences to keep the influence of modern culture out. Nevertheless, the Haredim need the city, with its jobs, taxes, services, and products. The result is ambivalent attitude toward the city: they are critical and insular but need to be close to it to benefit from its resources and services.

Recent demographic trends show clearly that Haredim may soon become one of the largest groups in the city. The proportion of Haredi students in primary schools is already 50 percent, rising to 54 percent in kindergartens. Demographic forecasts anticipate that in 2010 the Haredi population will reach 214,000, constituting 26 percent of the city’s population (and 38% of the Jewish population). Palestinian Arabs will form 31 percent of the city’s population. As a result, the non-Orthodox Israeli population will be a minority in the city.
The link between cultural identity and territory is manifested in a bitter conflict between secular and Haredi Jews on the 'seam' between the two territories. It is essentially a struggle over two distinct forms of life, which are expressed in different modes of territorial organisation. The Haredim wish to impose the precepts of Jewish law on everyday life, including patterns of behaviour within the territory, whereas the secular wish to pursue a liberal-democratic and modern way of life. For this reason secular Jews seek to defend their territories against any Haredi encroachment. Experience has shown that once Haredim move into a previously secular territory and pass a certain threshold a radical socio-territorial transformation follows. The Haredim have transformed secular schools into yeshivas, changed the nature of local communities to fit their cultural demands (particularly separation between men and women), and exerted enormous pressure on secular residents to move out or to conform to the Haredi way of life.

Because the Haredim conceive of all of Jerusalem (and actually the whole country) as sacred, they have occasionally tried to control the use of public space not only within their territory but also in more distant areas. In the late 1980s, for instance, they tried to prevent the opening of theatres, restaurants and coffee shops on the Sabbath and holidays. Other conflicts between Haredi and secular Jews were associated with the Haredi’s attempts to prevent the opening of a stadium, archaeological excavations, and immodest advertisements on billboards. In the past few years the Haredim have sequestered themselves in their neighbourhoods and have abandoned the fight for more distant areas. Nevertheless, the struggle over the areas in which the secular and Haredi populations are in contact has come to a head, especially in Ramot Allon and on Bar-Ilan Street, which is a thoroughfare. The Haredim wish to close the street on the Sabbath and Festivals whereas most of the seculars wish to maintain it open.

The mores that determine lifestyle in the various city neighbourhoods are one of the principal sources of conflict between Jerusalem’s secular and Haredi populations. The secular residents of Bukharim, Har Nof, Meqor Barukh, and Ramot Allon neighbourhoods hoped that despite the advent of Haredi families, their neighbourhoods’ schools, clubs, and community centres would continue to function as before. The newly arrived Haredi population, however, transformed the neighbourhoods’ community, cultural and educational institutions and took over the centres of local power: the community centre, the Project Renewal steering committee, and the neighbourhood administration.

Concurrent with the cultural-political confrontation between the two communities there developed a conflict, at times violent, over the continuing presence of secular families. Often the secular residents of these neighbourhoods were subjected to intense pressure to leave their homes and move elsewhere.
Map 3: The Haredi residential areas
Reacting to the Haredi’s territorial sprawl, secular groups, especially those living in close proximity to the Haredi population, have mobilised their members to defend their territory. At present, Ramot Allon, a neighbourhood in north-western Jerusalem, is the scene of the most comprehensive and extreme conflict between secular and Haredi groups. Already in the late 1970’s the secular residents of Ramot Allon successfully opposed Haredi attempt to close the road leading to their neighbourhood. In the 1980’s they built a swimming pool despite strong objections from the local Haredi community, and they are currently struggling to maintain the secular character of the school system and the neighbourhood council.

All the conflicts in the residential neighbourhoods have been characterised by asymmetrical relations between the two groups. The secular population tends to accept the Haredim and their way of life, whereas the Haredim reject the secular way of life and regard it as threat to their culture. The result is an uncompromising struggle on the part of the Haredim, at the end of which the secular residents are forced to give up their institutions and leave their homes. Recently, the secular population has begun to fight more vigorously for its neighbourhoods by trying to prevent the establishment of Haredi neighbourhoods adjacent to secular ones and by opposing the opening of Haredi schools in the heart of secular neighbourhoods.

3. Ethno-class identity: the poor neighbourhoods

Out of sight at the city’s edge lie two poverty belts. Lower-class Jews who immigrated (or whose parents immigrated) from Moslem countries, live in housing estates in the southern part of the city. Lower-class Arabs live mainly on the rural outskirts of the city in eastern areas annexed to the city after 1967 (see Map 4).

It was in the Jewish poverty belt that the urban protest movements of the 1970s and 1980s emerged and developed, most notable among them were the Israeli Black Panthers Movement and the Ohalim ‘Tents’ Movement. And it was in the Arab poverty belt that most of the violent incidents of the Intifada took place. The young people who founded grass roots organisations in the Jewish poverty belt were members of the immigrants’ second generation; people who came to Israel at a young age from Moslem countries (often referred to as oriental countries) or were born in formerly Arab neighbourhoods and housing projects designated for the new immigrants. The housing projects in which the urban protest was formed were hastily built by the Israeli government during the 1950s and the 1960s to accommodate the newly arrived immigrants. Most of these projects were established along the pre-1967 armistice line in order to create another defence line for the city.

Members of the immigrants’ second generation who grew up in the housing projects, protested against what they viewed as ethnic and social discrimination. They considered the housing projects where they lived to be socially segregated, overcrowded, run-down, and under-served. Housing projects and peripheral territories have thus come to represent deprivation and alienation.
Map 4: Jerusalem’s belt of poverty
Within Jewish Jerusalem, which as a whole is predominantly an Oriental city (much more so than Tel Aviv or Haifa), the population of the housing projects is nearly exclusively Oriental-Jewish. Hence the territorial identity was mixed with ethnicity. Yet ethnicity did not serve as a unifying banner for the entire Oriental Jewish population in Jerusalem. Social protest was confined to specific territories inhabited by poor Oriental immigrants, and middle class Oriental Jews remained estranged from the urban protest movements. In other words there has been an internal stratification in the wide ethnic group of Oriental origin, and a lining up of residents according to a more narrow socio-territorial base. The emergence of housing projects inhabited by poor Oriental Jews not only created economic cleavage along the ethnic line, differentiating between less and more established Oriental Jews, it also affected social consciousness. Essentially, it offered a housing-territorial interpretation of social reality and thus affected social alliances and activities.

Members of the protest movements pointed to the dilapidated housing, the poor physical infrastructure, the absence of community facilities and the existence of large groups of unemployed, delinquent groups in their area. They held the government responsible for neglecting these territories and sought to transform the nature of their neighbourhoods. Leaders of the movements sought to recruit other poor neighbourhoods into the struggle. As the founder of the Ohalim movement said, 'The struggle was to expand to the south, Katamon; to the north, Shmuel Hanavi; Nachlat Achim at the centre - and then to establish a federation. The struggle is to expand, from blocks 101 and 102 to the rest of the Katamonim, and from there to other parts of the city. Members of these protest groups have occasionally turned the territory into a symbol of social transformation. As the leader of the Ohalim said, 'They never believed that a power will emerge out of this ghetto'.

The protest movements marked a rise of a charismatic power that challenged the state and its conventions and rules. Although in the short run social conflict, confrontation and repression were unavoidable, things worked out differently in the long run. Over time, a complex process of social exchange developed between the state and the protest movements in the course of which some of the demands and challenges raised by the organisations were accepted, whereas others were rejected. The state made its position more flexible with regard to some of the demands and even began to encourage grass roots activity, as long as it was restricted to local issues and conducted within the existing political-economic framework. Some of the movements' leaders were offered attractive positions in the state apparatus and shifted their alliance from the neighbourhood to the state. Interaction of this type allowed the political system to avoid a comprehensive socio-economic reform or genuine sharing of power resources. This is the essence of the conflict absorption strategy assumed by the Israeli government, a strategy that secured the socio-political status quo.

Urban protest on the part of the Israeli Black Panthers Movement or the Ohalim Movement has been utilised in the long run as a means of socialisation and even a way of incorporating peripheral social groups into mainstream society, and into the state apparatus. When viewed historically, social protest in Jerusalem has become a means
to an opposite end, that is to political neutralisation and maintenance of the status quo. The state, in other words, has succeeded in expropriating even its critics.

4. Environmental identity

The Jerusalem’s municipality lacks an overall city plan. Nevertheless in recent years the local and central governments in co-operation with the business sector have launched some massive uncoordinated development programs for Jerusalem. The programs include revitalization of downtown areas, large scale development of roads, hotels and residential areas, and designation of green valleys, hitherto considered the 'green lungs' of the city, for the construction of residential areas and industrial zones. In the course of this uncoordinated process, old and sensitive urban sites have been earmarked for demolition and reconstruction. And small plots of lands owned by private owners have been set aside for the construction of high rise buildings. These projects have a profound impact on the city landscape, and the quality of life of Jerusalem’s citizens.

Unlike the former mayor of the city, Teddy Kollek, the newly elected mayor, Ehud Olmert, has adopted a dismissive attitude toward citizen participation in decision making. Subsequently, many of the new development programs were planned through close contact between the local government and the private sector with minimal consultation with neighbourhood residents.

The public, however, did not remain passive. Politicians, bureaucrats and entrepreneurs have been confronted by a massive wave of protest originating in the residential neighbourhoods bordering on the development sites, as well as by national ecological organisations. The residents of Beit Hakerem neighbourhood, for instance, sought to prevent the development of Route 4, which cuts across an adjacent valley. The residents of Ramot Allon formed a coalition with a nearby ultra-Orthodox community to oppose the expansion of an industrial zone (in Har Hotzvim) that borders the neighbourhood. The residents of Nahlat Ahim protested against the widening of Bezalel street, which is supposed to become a major entrance to the central business district. The residents of Ein Karem are trying to protect a nearby valley slated for development. The resident of Gilo, Manahat and Ramat Sharet have created an urban coalition to defend the local valley at the south-western section of the city and to prevent massive development on the Holyland Hill. Beside these local protests a city-wide struggle is launched to prevent demolition of old sections in the western part of the city.

The chief struggle, however, concerns the plan to develop a large residential area, an industrial park and a main road in the valley that stretches along the western entrance to Jerusalem (Emeq Ha’arazim). Although two national master plans have designated the valley for open space, the Jerusalem municipality, with assistance from the Israel Lands Administration (a governmental organ in charge of state lands), seeks to transform the valley into a major development site. (See Map 5).

In all these struggles the local and central governments as well as the private sector have justified the development plans on economic grounds. It has been pointed
out that roads, hotels and industrial parks would increase the number of jobs in the city and eventually enhance the social welfare of the city’s population.

The neighbourhoods involved in the struggles grounded their opposition to development in both material and symbolic considerations. It has been argued that the neighbourhood’s aims are to protect property value (i.e., housing), to preserve natural assets, and to maintain old communities against economic encroachment. In the course of these struggles an environmental *cum* territorial consciousness was developed, in which old neighbourhoods, communities, open spaces, and valleys have been transformed into symbols of local identity.

It is evident that at the roots of all these conflicts is a structural tension between and urban growth and protection of environmental assets, economic development and quality life. The chief protagonists are private-public coalitions on the one hand and citizen groups on the other. Yet the environmental conflicts are most of the times ephemeral, especially when compared with the stability and near-immutability of the national, cultural and class cleavages. The environmental and neighbourhood conflicts had a mobilising effect, but most of the times they remained limited in their territorial and social scope, and failed to transcend local issues and to link with broader environmental and social struggles.

Despite the strong support lend by the local government to the business sector, the neighbourhood organisations have attained some cultural and political achievements. Culturally, old neighbourhoods, communities, open spaces, and valleys have been transformed through these struggles into symbols of local identity. Politically, the neighbourhoods were able to prevent the expansion of industrial parks, to limit the construction of roads and to reduce the density of certain projects. Nevertheless, all of these are just minor modification. It seems that after a long period of empowerment and participation in decision making associated with Kollek’s mayorship, the neighbourhoods of Jerusalem are suffering a serious setback if not a real decline in their political power under Olmert.
Map 5: The geographic pattern of environmental conflicts
5. Discussion

In the preceding sections, four identity groups have been identified. Each group was presented in isolation from the other in order to clarify its distinctive features. In the discussion section, I will move beyond the discrete features to expose some common issues that run across the different groups. Table 1 presents the demographic breakdown of the city population according to the four identity groups.

In 1993, the Palestinians formed 28.3 per cent of the city population, and the Jews formed 71.7 per cent. The Haredi population accounted for one fifth of the city population, and formed 30 per cent of the Jewish population of the city. Due to its high rates of natural increase, the Haredi population may turn into the largest group in the Jewish population. According to statistical forecasts for the year 2010, the Palestinians will form 30.7 per cent of city population and the Jews 69.3 per cent. Within the Jewish population the proportion of the Haredi population will rise to 37.8 per cent.7

Table 1: The population of Jerusalem according to major identity groups

<table>
<thead>
<tr>
<th>Jerusalem identity groups</th>
<th>1993 (Absolute numbers)</th>
<th>1993 (Percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower class (1)</td>
<td>60,000</td>
<td>10.6</td>
</tr>
<tr>
<td>Lower-middle to upper classes</td>
<td>100,800</td>
<td>17.7</td>
</tr>
<tr>
<td>Palestinian Arabs - total</td>
<td>160,800</td>
<td>28.3</td>
</tr>
<tr>
<td>Haredim (2)</td>
<td>120,000</td>
<td>21.2</td>
</tr>
<tr>
<td>Lower class (3)</td>
<td>51,000</td>
<td>9.0</td>
</tr>
<tr>
<td>Lower-middle to upper classes</td>
<td>235,400</td>
<td>41.5</td>
</tr>
<tr>
<td>Jews - total</td>
<td>406,400</td>
<td>71.7</td>
</tr>
<tr>
<td>Total</td>
<td>567,200</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: Jerusalem Statistical Yearbook, Table III/1.
(1) Author's calculation based on place of residence, source: Ibid, Table III/12
(2) Based on population projection, source: Ibid., Table III/6.
(3) Author's calculation based on place of residence, source: Ibid., Table III/12.

The four identity groups owe their origins to large scale historical processes and everyday life experiences. Without diminishing the importance of these processes and experiences, this study shows that resistance made a significant contribution to the reconstruction of identity.

To be sure, resistance, as Table 2 clearly shows, has taken different forms: national, cultural, socio-economic and environmental. Each group carried out a particular struggle and pursued its distinct objectives. The Palestinians sought to
attain national liberation with Jerusalem as the capital of the state of Palestine. The Haredi favoured cultural autonomy and self-management. The lower class Mizrahim struggled for social equality and empowerment, and the citizens involved in environmental conflicts sought to defend their turf and enhance citizen participation and accountability in decision making.

Territory stood at the centre of all these conflicts and played a major role in the reshaping of group's identity. In spite of the profound differences in goals and objectives, each identity group struggled to create a new territory by challenging existing political structures and geographic patterns. The Palestinians sought to achieve territorial partition, sovereignty, control over land and the transformation of East Jerusalem into the capital of the Palestinian state.

The Haredim wished to segregate themselves from the secular society, secure urban space for their community and impose certain modes of conduct over Jerusalem, i.e. closure of streets for traffic and closure of entertainment and recreation venues on Sabbath and Festivals. In so doing they sought to create a segregated sacred space inhabited by a holy community. They managed to close roads within their neighbourhoods on Sabbath but failed to close entertainment and recreation venues on Sabbath and Festivals. The Palestinians and the Haredim thus sought to curve out a separate territory for themselves, although the implications of separation were national for the one and cultural for the other group.

By contrast, in both the case of the Mizrahim who live in the poor housing projects and the environmental activists, the aim was not territorial separation but mobilisation and protection of resources. The Mizrahim sought to mobilise more resources and attain socio-spatial integration with the rest of society. This implied some far reaching changes: eradicating socio-economic gaps between immigrant housing estates and affluent areas, local empowerment, that is, better access to economic and political resources and political control over local space. The environmentalists sought to defend their material property, and sometimes to maintain their symbolic property, that is to say, the community, against economic encroachment. Practically, they protected the environment and improved the quality of life by:

a) Curbing urban development conceived as harmful for the quality of life;
b) Improving public services at the local level;
c) Conserving old sites and historical fabrics within the city;
d) Determining land use to create balanced development.

In the cases of the Mizrahim and the environmentalists the struggles started locally, and were therefore very territorially defined. With few minor exceptions, these struggles failed to transcend their original territorial boundaries, and to create a much more powerful urban or national group based on additional social attributes besides the territorial ones, i.e. Oriental-Jewish or national-environmental identity.

Territory played a crucial role in all the struggles, being conceived as both a strategic asset and a symbol. At the centre of the national struggle was the territory of East Jerusalem occupied by Israel during the 1967 war. The holy places served as major symbols of conflict and became part of the national iconography around which
Palestinians and Jews were mobilised. At the centre of the cultural struggle between the Haredi and the secular society were residential areas, roads, entertainment and recreational sites. Dilapidated neighbourhoods and poor housing stood at the centre of the Mizrahim’s struggle, serving as a common symbol around which people gathered and formed the protest movements. In so doing the Mizrahim turned poverty neighbourhoods into a symbol of power and a basis for social mobilisation. Finally, new development projects, threatened neighbourhoods, green valleys and old urban fabrics designated for demolition were the main arena of environmental conflicts.

Each identity group developed a distinct set of strategies to defend its turf. The Palestinians developed an endurance strategy, sumud, of holding on to the land. Besides holding on to the land the Palestinians boycotted the municipal elections, developed their local institutions, especially in the religious and educational spheres, initiated the Intifada and developed close contacts with the Palestinian Authority.

The Haredim developed a plethora of strategies to control modes of conduct within their residential areas. They managed to drive out secular residents who did not conform with the Haredi codex of behaviour and to prohibit drive on Sabbath in Haredi areas. In addition, the Haredim developed their own separate cultural and educational system and over time became a powerful actor in municipal politics.

The Mizrahim attracted attention to their plight by demonstrating against the housing policy of the Israeli government. They also developed a whole set of local services to their constituency at the local level and developed new systems of local management and citizen participation in decision making. Finally, the citizens involved in environmental struggles developed a whole set of reactive strategies to hinder urban development or to modify it. To attain their goals, they resorted to local advocacy, lobbying, public opinion campaigns, and occasionally appealed to the supreme court.

In the struggle over territory, each group confronted the state, albeit in a different way. The Palestinians’ confrontation was strategic, aiming to defy the state’s legitimacy. The confrontation was tactical in the case of the other groups, criticising a specific state’s policy without undermining state’s legitimacy.

The Palestinians confronted Israel’s geopolitical policy that sought to maintain Jerusalem united under Israel sovereignty. The Haredim confronted the secular conduct of life - as manifested, for example in the opening of entertainment and recreation venues on Sabbath and Festivals - and its endorsement by the Supreme Court. They also criticised the state for its alleged discrimination of the Haredim in the spheres of housing and service provision. The Mizrahim challenged state’s policy that in their view entrenched the status quo. And the citizens confronted state policy that favoured urban development and economic growth over environmental considerations.
<table>
<thead>
<tr>
<th>Type of urban resistance</th>
<th>Ethno-national struggle</th>
<th>Cultural-religious conflict</th>
<th>Socio-economic protest</th>
<th>Environmental conflict</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent of resistance</td>
<td>Palestinians</td>
<td>Haredim groups</td>
<td>Mizrahim</td>
<td>Residents of the city</td>
</tr>
<tr>
<td>Objectives of resistance</td>
<td>National liberation with Jerusalem as the capital of state of Palestine</td>
<td>Cultural autonomy and self-management</td>
<td>Social equality and empowerment</td>
<td>Environmental quality of life, citizen participation and accountability</td>
</tr>
<tr>
<td>Geographic goals of resistance</td>
<td>- Territorial partition along national lines: East Jerusalem as the capital of a Palestinian state - Preservation of and control over cultural and social space - Creating shadow government at the local level</td>
<td>- Territorial segregation along cultural lines: creating a sacred space at the neighbourhood and urban levels - Maintenance of socially controlled space - Securing territorial expansion - Control over certain urban utilities and sites</td>
<td>- Socio-geographic integration: Eradicating socio-economic gaps between immigrant housing estates and affluent areas - Local empowerment: access to economic and political resources - Political control over local space - Cultural-territorial representation</td>
<td>- Improving and defending environmental quality and quality of life by: a) curbing urban development conceived as harmful for the quality of life b) Improvement of public services at the local level c) Conservation d) Determining land use to create balanced development</td>
</tr>
<tr>
<td>Sites of contestation</td>
<td>- Holy places - Confiscated land</td>
<td>- Defended neighbourhoods - Public utilities - Archaeological sites - Roads</td>
<td>Housing estates</td>
<td>- Neighbourhood without appropriate services - Road construction - New development projects</td>
</tr>
<tr>
<td>Type of urban resistance</td>
<td>Ethno-national struggle</td>
<td>Cultural-religious conflict</td>
<td>Socio-economic protest</td>
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</tr>
<tr>
<td>--------------------------</td>
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</tr>
<tr>
<td>Spatial Strategy of resistance</td>
<td>Holding on to land</td>
<td>Creation of sacred place Attacking secular space</td>
<td>- Local mobilisation - Turning marginal territory into a symbol of power</td>
<td>- Site specific reactive planning based upon local advocacy and lobbying.</td>
</tr>
<tr>
<td>Socio-political strategy of resistance</td>
<td>- Boycotting state apparatus - Building civil society - Intifada</td>
<td>- Self-management: separate educational, cultural and judicial system - Demonstrations - Political takeover of the municipality</td>
<td>- Social protest with universal to particularistic social messages</td>
<td>- Local conflict</td>
</tr>
<tr>
<td>Adversary</td>
<td>- Local and central government’s geopolitical policy - The other nation</td>
<td>Secular society: modern norms</td>
<td>State: political-economic policy</td>
<td>State and private developers: urban-economic policy</td>
</tr>
<tr>
<td>Goal of adversary</td>
<td>- Jerusalem united under Israeli sovereignty - Control over territory - Strengthening Jewish majority</td>
<td>- Pluralist city governed by modern-secular norms</td>
<td>Maintenance of the economic and political status quo</td>
<td>- Urban (land) development - Economic growth</td>
</tr>
<tr>
<td>Conflicting projects</td>
<td>Secession and partition versus Control and domination</td>
<td>Voluntary segregation and imposing religious life versus Secularisation</td>
<td>Redistribution of economic and political resources versus maintenance of the status quo and paternalism</td>
<td>Maintenance of quality of life versus Development</td>
</tr>
<tr>
<td>Organisations of resistance</td>
<td>Fragmented resistance: National organisations, Waqf, Joint Palestinian-Jordanian Committee, Neighbourhoods</td>
<td>Eda Haredit, Voluntary organisations, local organisations</td>
<td>Protest movements</td>
<td>Neighbourhood organisations, city-wide and nation-wide organisations</td>
</tr>
</tbody>
</table>
Conclusion

Long-term historical processes have produced distinct ethno-national, cultural and social identities in Jerusalem. Each identity group occupies a specific territory within the city. The Arabs occupy the eastern part, the Haredim the northern part, the working class the southern and eastern parts, and the ‘environmental’ groups although spread across the city, tend to concentrate at the south-western part. The identity of these groups has been reshaped and reconstructed by territorial struggles.

As the four cases clearly show, territory has played a major role in the reconstruction of national, cultural, social and ecological identities in Jerusalem. It affected identity in five distinct ways. First, territory has separated one group from the others by embracing a certain group within its confines and excluding all the others. Second, territory has been considered as a material asset that must be defended and protected against encroachment by the others. Third, territory has been transformed into a symbol of group’s identity. Fourth, territory has served as a basis for social mobilisation and resistance. And finally, distinct spatial strategies have been developed to protect group’s territory. Indeed, in their struggles the different identity groups developed a myriad of spatial strategies: holding on to the land, creating a sacred space, turning marginal places into symbols of social resistance and defending residential sites against unrestrained development.

The meaning of territory varies among the different identity groups, being endowed with geopolitical, cultural, and economic significance. As a result, territory has become a principal element in political, cultural, and ethnic identity. These multiple meanings, which are both material and symbolic, have served as powerful means of mobilising constituencies. Holy sites, strategic spaces, sacred neighbourhoods, deprived housing projects, and protected environments are not only the arena of conflicts but also the banners around which people mobilise, build their grass root organisations, form their agendas, challenge their adversaries and ultimately reconstruct their identity.

It is interesting to note in the juncture that territory seems to play an important role in the reconstruction of identity in Brussels as well, although in a different way. As Detant writes in this report: "Indeed, language is not the only possible principle for political mobilisation. It is very well possible that in the long run the political distinction will manifest itself on the basis of territorial loyalty with Brussels." Whereas territory in Jerusalem tends to exacerbate national cleavages, it seems to work in the opposite direction in Brussels, that is to augment solidarity and loyalty among the French- and Flemish speaking groups. It may well be that this difference lies in the type of metaphors and images constructed around the two cities. One may argue that Brussels has become associated with an image of an in-between zone, a bridge, where the two linguistic groups meet and interact with each other. On the other hand, Jerusalem has become inextricably linked with particularistic, conflict oriented images and metaphors.

Four conflict oriented metaphors associated with Jerusalem’s identity, seem to suggest themselves at this point: the fortress like city, the city as a spoils system, the
dual city and the city as a source of profit. The conflict between Israelis and Palestinians endowed the city with a fortress-like image. The city landscape has turned into a battleground between the two groups, being dotted with fortress-like Jewish neighbourhoods that dominate the city landscape. The conflict between Haredi and secular Jews has turned the seam-line between the two communities into a frontier like area, wherein the Haredi group invade into secular neighbourhoods driving out their secular residents. In the course of this cultural struggle much of the city’s area has become a scarce resource on which the two communities compete with each other, trying to secure their future growth. The conflict between lower and middle class groups is manifested in well established neighbourhoods at the city’s core and lower class areas at the city’s periphery. Finally, the conflict between developers (who are aided by politicians and bureaucrats) and neighbourhood residents and environmentalists has resulted in the transformation of urban territory and the city’s landscape into a source of profit. Each conflict is thus associated not only with the reconstruction of group’s identity but also with the construction of Jerusalem’s identity.

At present the city of Jerusalem is not only a historical spiritual centre associated with generations’ dream for peace and justice, it is also a violent city rife with tensions and conflicts. It is a symbol of national, cultural, economic and ecological struggles, and its landscape has fallen prey to unrelenting conflicts associated with control over land. It is against this backdrop that one may ask whether Jerusalem’s universal image of a spiritual, tolerant and just city can overcome its current, particularistic and conflict ridden image. This is perhaps the greatest challenge awaiting all those concerned about Jerusalem’s future.

Notes

1 Hasson, 1996a.
4 Hasson. 1996b.

References


THE EVOLUTION OF JERUSALEM AS A PALESTINIAN CITY

Ali Hussein Qleibo (IPCRI)

As for Jerusalem it is for us like it is for you. And it is greater for us than it is for you because it is the place of our Prophet's night journey and the gathering place in the day of judgement so don't expect us to give it up.¹

Saladin

Jerusalem in our times is a magnificent city: for it is well built between mountains and valleys. Some of the buildings rise on high promontories and some of them lie low in the valley...Most of the high buildings look onto the buildings below them. The streets of the city are mostly paved but some remain mud beaten tracks...In most places one sees older buildings that were built over; new buildings ride on top of older buildings. The building is so compact such as were it to be set apart, like in the rest of the Muslim cities, it would be double in size.²

Mujir el-Deen al-Hanbali

The significance of Jerusalem for Judaism, Christianity and Islam is incontestable: the city is steeped in the consciousness and hearts of the members of the three monotheistic religions. On a metaphysical level, the universalistic significance of Jerusalem - the Ideal Jerusalem in everyone's heart and mind - is counterpoised by another reality, namely that of the city of people and of stones. Palestinian Muslim and Christian socio-economic cultural presence has prevailed for centuries in the Holy City. The urban landscape of Jerusalem reflects the particular character of the Muslim and Crusader occupations of the Holy City; the zigzagging streets, the winding alleys, the Ottoman sibyls, (water fountains), the massive Mamluke gates in red, white and black stones interlaced with Quranic verses, floral and geometric arabesque designs. On the roof tops the plethora of domed houses, palaces, madrases, khans, zawiehs, mosques topped by crescents showing various profiles of the moon are silent testimonies to the various political systems that superseded each other in Palestine to be collectively inherited by the ministry of Awqaf, an institute within the ministry of religion that functions as a Muslim trust fund. The people who live in Jerusalem were shaped by the Awqaf system and it is this particular relationship of Muslim family properties to the Waqf system and the Christian properties to the various monastic orders that structured Jerusalem's unique character through the past two millennia.

For fourteen centuries, the sovereignty of Al-Quds al-Sharif, except during the Crusades, had remained Muslim Arabic. Two other dates stand out in the history of Muslim Jerusalem: 633 AD and 1187 AD. The first date signals the peace treaty between Sophronius and the Caliph Omar marking the transformation of Jerusalem from a Byzantine to an Arab Holy City, from Aelia Capitolina to Al-Quds al-Sharif.³ The second date celebrates the end of the Latin Kingdom in Jerusalem established by
Baudouin and the signing of the truce between Saladin and Richard the Lion Heart. Through the terms in which these peace treaties were concluded the religio-residential geography of Jerusalem was discursively established along theological, economical, political, and demographical paradigmatic lines.

The character of the city, as may be glanced by a casual walk through its streets, is dominated by Muslim architecture and aesthetics testifying to fourteen centuries of political economic dominance. However, unlike other Muslim cities, Christian, Muslim and Jewish religious relics has demarcated the geographic and demographic spread of its neighbourhoods within very defined boundaries: Al-Quds is a compact densely built city. Until the nineteenth century urban development had remained vertical. Older buildings have always been used as the foundations for newer buildings. Jebusite or Canaanite structures were used by Hasmonaean builders whose foundations in turn were incorporated by the Romans whose city, as revealed by the sixth century map of Madaba, provided the skeleton of Moslem Jerusalem. Essentially the Byzantine roads, streets and alleys provide the structural space for the building that was to follow during the next fourteen centuries in the various spurts of extravagant construction and beautification of Jerusalem as a major Moslem Holy City. On the whole the Ummayads, the Fatimids, Ayyubids, Mamlukes and Ottomans - throughout the fourteen centuries of Moslem sovereignty - were built in accordance to the urban plans furnished by the Byzantines.

Jerusalem’s position as a Byzantine outpost for many centuries does not undermine its Muslim roots. It must be remembered that Muslim Arabic historiography, in contradiction with modern Western Orientalist discourse, proffers as ‘Arab’ the various waves of ‘Semitic’ people that from primordial days had emigrated from the Arabian peninsula to the Fertile Crescent Al-Hilal al Khaseeb which comprises Greater Syria Bilad al-Sham, and Iraq. The significance of the migratory trend, a demographic cultural pattern of wandering nomads sedentarising through time on the eastern and northern steppes of the Arabian Peninsula, cannot be underestimated. Corollary to the continuous demographic expansion of the various Arabian tribes into the Fertile Crescent, a special relationship developed whereby these adjacent areas came to be viewed as a natural extension of the Arabian peninsula itself. This understanding finds its ultimate expression in the Muslim description of these regions as Dar al Islam, i.e. the natural sanctum of Islam. For several millennia the pre-Muslim wandering nomads imparted Palestine with special spiritual significance culminating with the Canaanite Arab king Melki Sadek’s appellation of his capital as UrSalem, the City of Peace. Henceforth, ‘Semitic myth’ and religious history intertwine to underline the unique qualities of Jerusalem. Prophet Abraham was well received in Melki Sadek’s capital, Jesus lived his last days in Jerusalem, and in Jerusalem Prophet Muhammed was elected by Allah as al-Mustapha al-Habib, the beloved chosen one. In Islam Jerusalem, becomes Al-Quds al-Sharif, the Holy Sanctuary, a concrete metaphor of all that is spiritual and noble. The ‘amrat’ of the restless wandering nomads finds its spiritual ‘pharmakos’ in the assurance that Islam provides; namely that the Holy Rock, al-Sakrah, is a piece of heaven on earth.
That the Palestinian Christians who stayed on in Jerusalem, following the surrender of Jerusalem to Muslim sovereignty, were of Arabic roots and had welcomed the evacuation of the Byzantine occupations is often repeated by Arabic historians and is expressed in the format of the peace treaties whereby the Byzantine rulers were distinguished from the local Christians who were perceived as Arabs. Not only in Jerusalem but also in the various Hellenistic outposts: Damascus, Tarsus, Cairo etc., the local Christians received the Muslim conquerors with relief. In Jerusalem two treaties appear, the Caliph Omar peace terms and, in return, a written pledge by the local Christians specifying their relationship with and duties to the Muslim ruler. Noteworthy in the former treaty is the distinction of the Christians into two groups: the foreign Rum, the Byzantine and the local Christian Arabs.

The foreign Byzantines were permitted safe return to Byzantium. The terms of the treaty were concluded with the native Arab Christians who were represented by their Patriarch Sophronius. In the treaty the Palestinian Christians stipulated that no Jew should be allowed to live in Jerusalem, and adjoining countryside. The spoken language of Palestine at that early stage remained Aramean, which is seen by Muslim linguists as an Arabic dialect. Greek was the official language. The full arabisation of Palestine was not to begin until another fifty years had passed.

The development of residential neighbourhoods, Harat, is very difficult to trace. Documents providing an outline of the date and aim of the various buildings may be available but there ever shifting functions keep the demographic social evolution of the city veiled in mystery. The earliest example of dividing the Holy City between the Muslims and Christians is attributed to the Caliph Omar. Having visited the church of the Holy Sepulchre and on his way to the site of the Holy Rock whence prophet Mohammed ascended to Heaven Sakhet al Mi'raj, the second Caliph of Islam stopped at the top of the Arms market, Suq al-Bazzazin, and inquired, 'To whom does this market belong? They answered, 'To the Christians'. And he asked to whom belongs the one to the left' (the one with the bath) they said to the Christians. So he said with his hand this is theirs and this is theirs and this one is for us - the middle one between the two markets which used to have the lead dome [...]. Initially the residential neighbourhoods, Harat, were not segregated along religious lines. Even after the Fatimid Caliph al-Hakim destroyed the Church of the Holy Sepulchre and other Christian holy sites, Muslims and Christians continued living together. The setting up of exclusively religious residential quarters took place early in the eleventh century when Haret al-Batraq, the Patriarch's neighbourhood, was assigned to the local Christians. Orders from the caliph al-Mustansir were issued to the effect that Muslims should vacate their homes and move to other parts of the city. This event is explained by the need at the time to repair the city walls. The Fatimide Caliph asked the Christian citizens to repair a portion of the wall. They did not have money and the government encouraged them to seek financial assistance from the Byzantine Emperor, which he did. The wall was finished in 1063 AD with the condition that the neighbourhood becomes exclusively Christian.

The boundaries of the Haret al-Batraq were clearly defined: The outer boundary of the quarter runs parallel to the walls of the city which extends from the
Western gate (i.e. Jaffa gate) and continues along the wall to St-Stephen's Gate (Damascus gate) all this area was put under the jurisdiction of the Greek Patriarch. Shortly afterwards the Abbaside caliph, al-Mustansir gave as a gift to the European merchants of Amalphi, a piece of land adjacent to Haret al-Batraq. On that piece of land a monastery was built known by the name of St. Mary of the Latins. Later another hospice for female pilgrims was constructed and next to it St. John's Hospice.

Throughout the Crusades the general features of Jerusalem remained unaltered; building and destruction machinery were not sufficiently developed in the twelfth century to allow for a redefinition of the city's topography. Following Saladin's liberation of Jerusalem Friday the fifth of Shaaban - October 1187 AD - the Muslim Arab character of the Dome of the Rock was restored with the removal of the crosses and Christian iconography from the Dome of the Rock. In less than two weeks following the surrender of Jerusalem all the Latins had left the city. Their quarters, markets, and various institutes became vacant. Only a few local Arab Christians remained in the Christian Quarter, some Greek priests and other Oriental Christians. Haret Al-Batraq, after the forced withdrawal of the Latin Crusaders was left almost empty. The local Christians paid a ransom al fidieh, and asked Salah al-Din to allow them to continue in their homes, pay the jizieh, tax money, and continue normal life in the Holy City.

The strengthening of the fortifications and walls of Jerusalem was of grave importance but Saladin's primary concern was demographic. Throughout the Crusades few Muslims and Jews were tolerated to live in Jerusalem. To return Muslim dominance in the city Salah al-Din settled a few Arab tribes in Jerusalem. The Palestinian countryside was also settled, for administrative purposes, by some Arab tribes. Salah al-Din endowed fiefs, sometimes whole villages (the local peasants became thereby landless) whose revenue supported the Waqf system in Jerusalem, these fiefs became the basis of the Timariyyat system. Jerusalem Harat were thus populated by the various Arab tribes in addition to the Kurds and Turkomans who constituted the bulk of Salah al-deen army. The Bani Hareth tribe were settled near the Citadel outside the walls. Haret Bani Murrah after the Bani-Murrah tribe was north west of Suq Khan el-Zeit. Haret el-Saadieh was assigned for the Bani Sa'd tribe who were appointed the custody of Bab el-Khalil. Aqabet al-Jaramneh, in Suq el-Qattanin, and Aqabet el-Shieyik was called Haret Bani Zayd after the Bani Zayd tribe. Then he appointed the various religious festivals, Mawsem el-Nabi Musa, Mawsem el-Nabi Saleh etc... and distributed the various religious and administrative functionaries in their respective positions. He entrusted the administration to his brother el-Adel who in turn gave over the administration to a Turkish prince, Husam el-Deen Sarouj.

Thousands of Muslims came to Jerusalem after October 1187 but the majority continued their way back to their respective homes or to Mecca afterwards. Most of those who stayed on of the first group were soldiers, civil servants and their families, theologians and jurisprudents and sufis who took their positions in the various mosques madaress and zawaya etc... Along with their religious positions they
were assigned housing and lived around the Haram and various areas of Haret al Batrach and from this group grew the Jerusalem elite.32

On his second visit in 1191 Saladin was content to see that life was once again normalising in Al-Quds Al-Sharif.33 In his effort to personally supervise the reinforcement and expansion of the south western part of Jerusalem's wall, Salah el-Din took residence in the priests quarter adjacent to and overlooking the Church of the Holy Sepulchre in Haret al-Batraq.34 A deep trench was dug and the stones were used for construction around Jaffa Gate. It is reported that he personally participated in the construction work carrying the masonry on his saddle. In effect the area around the Dormition Abbey and the houses adjacent to it were included within the new wall. Part of the house of the Patriarch, the Greek Orthodox monastery, was used by Saladin as his own personal residence. The greater part, however, was turned over to a Sufi Centre for study and meditation (khānqāh), and he attached many awqafs to it. To build the muristan, the hospital (which remained in function until the nineteenth century) the land given to the Latin Amalphi merchants, in particular St. Johns Hospice, was transformed and new parts were added to it.35 Between 1193 and 1219 most of the Arab population was resettled and the number of endowments increased. Jerusalem's social structure as a religious centre with the known patrician families was defined once and for all through the various functions and positions assigned to their members.

During the Crusades only a few Jews were tolerated around the Tower of David but Saladin's open policy allowed greater numbers to move in. Three groups stand out; Jews of Ashqelon who, after Saladin destroyed its fortification in 1191, moved to Jerusalem, the North African Jews who came to the East around 1198-99 and French Jews, about 300 families who arrived in two waves in 1210.36 Two new neighbourhoods were established, though relatively small in size, Haret el-Magharbeh and Haret el-Yahud. The latter was west of the former separated by Haret el-Sharaf.37 At that period the king of Damascus set up as an endowment, Waqf for all the pilgrims, residents and visitors from North Africa, the quarter of the North Africans, Haret el-Magharbeh.38

Saladin established the first khānqāh in Jerusalem. The khānqāh may be described as a medieval religious cultural centre, usually composed of lecture rooms, a private mosque (to which books would be also endowed), dormitories for students - with segregated facilities for the bachelors and the married scholars and students - and collective public kitchen. The endowment would specify the exclusive use of the facilities and full rights of lodging, study and meditation to a particular Sufi order whose international followers, could come and study in Jerusalem (for the sufis the city produced the feeling of sakïnah, a mystic state of inner peace and harmony). Moreover, the khānqāh would be appointed a dean, a chief, to represent one of the four Moslem schools of jurisprudence. The Khanqah el-Salahieh, next to St. Stephens Gate, developed great international reputation and its Sheikh, religious dean, was of great scholastic, highly esteemed to such an extent that only the greatest scholars were offered the position. Mujir el-Deen gives a detailed listing of the illustrious scholars who succeeded in that position attesting to its importance.39
Salah el-Din laid the foundation of Waqf that future successors did not deviate from and that stamped Jerusalem with its unique character. The tradition of iqaf stems from the verb wqf, in the sense of endowment and trustfund. As such a college madrasa would be built, a public kitchen Tikye or a water fountain and an aqueduct system Sabyl; in short any public related institute that is administered by a particular body of the religious state apparatus the Awqaf Ministry. These buildings belonged to the Muslim community and cannot be transformed into private real estate, moreover they cannot be sold, bartered or transformed in function or appearance. To these institutes madrasa, khannah or zawieh, 'ikiyyeh, sabyl, or hammam various sources of revenue were attached so as to guarantee their eternal operational status in accordance with the wishes of the endower. The sources of revenue varied from building and renting entire market places, aswaq (sing. suq) as in Suq el Attarin and Suq al Bazar, whose annual rent would provide a stable income in conjunction with the yields of fields of wheat, barley, sesame, and olive groves. More often the practice would include endowing the produce and income of entire villages to maintain the Waqf. In the urban centres khans (caravanserais), hammams (bath houses), cafes, public ovens afran and even houses, would also be built as supplementary sources of revenue to keep the smooth running of the religious institute. In Jerusalem this Ayyubide tradition was carried to a great zenith in the Mamluke period and continued through to the early Ottoman period (see below). In fact the Old City of Jerusalem has come to us so well preserved because the greater portion of its buildings belong to the Waqf system; the structure of the endowed buildings cannot be, according to Muslim law, tampered with. It is extremely rare to find in Jerusalem a privately owned house, for most properties throughout history, have come to be attached either to the various Christian monastic orders or to Muslim Awqaf either as Waqf am, public endowment owned by ministry of religion, or Waqf zhuuri, private family endowments whereby the heirs become beneficiaries but the administration is supervised by the Muslim court and who becomes the owner when the family becomes extinct.

The Ayyubide sultans shared Saladin's religious desire to set up Jerusalem as a Muslim centre of study by building madrasa, zawiehs and various religious institutes. Saladin's son el-Afdal established the el-Madrasa el-Afdalieh for the Malkieh school of theology. Since the Malkieh were mainly North African the Afdalieh College was built in their quarter, Haret el-Magharbeh. His brother al-Adel was responsible for the building of asbela, the water fountains for drinking and ablutions in the al-Aqsa Mosque, and two colleges for the Hanafi school of thought, al-Madrasa al-Muazamieh and al-Nahwieh circa 1207. But none of Saladin's children lived in Jerusalem or made it their capital since it was considered not to have any strategic political value. The significance and value of Jerusalem was to remain a Holy City, a sentiment that Saladin had already expressed in his negotiations over the terms of the peace treaty with Richard Lion Heart.

Following Saladin's death it was considered urgent to remove Jerusalem's fortification lest it should fall once again in Crusader hands. With the walls destroyed Jerusalem became vulnerable to pernicious looting and endless raids by marauding
nomads and brigands. In fear, many people escaped to safer areas. Jerusalem became a small depopulated town until 1292 when the fears of the return of the Latins subsided.43

The glorious façades of crumbling buildings in the Old City testifying to the ancient glory of al-Quds el-Shariff dates to the Mamluke period (1250-1517 AD). The Mamluke period also gave Jerusalem one of its greatest historians; Mujir el-Deen el-Hanbaly el-Aleemy (1455-1520). Through his works we have a detailed chronicling of the cultural social life and the first detailed description of the neighbourhoods, Harat. His work provides the biographies of the scholars from the early Moslem conquest until his time. The long list of names attest to the great significance of Mamluke Jerusalem as a centre for the dissemination of Moslem Knowledge.44

Mamluke Jerusalem became par excellence both the ideal exile city and retirement centre. Mamluke administrators chose to withdraw from their positions and take residence around el-Aqsa Mosque. Close enough to Cairo and yet far from the palace intrigues Jerusalem became the exile city par excellence.45 During the Mamluke period Jerusalem experienced tremendous growth and prosperity. Though exact demographic studies of that period are lacking, it is nevertheless undeniable that the Muslim population had great influx.46 The threat of another Mongolian attack on Damascus propelled many Syrians to take shelter in Jerusalem.

A great number of domed buildings with magnificently decorated doorways and windows dotted the streets to accommodate the influx of religious scholars and laymen who flocked to the Holy City to join al-mujawereen, to become neighbours of the Al-Aqsa. A retiring sultan, minister or senior administrator, it must be remembered, brought his retainers in addition to his extended family. Jerusalem's Umayyad architectural masterpiece, The Dome of the Rock, was further enhanced by the addition of palacial madares (pl. madrasa), Zawaya (pl. zawiah) arabitah (pl. ribat) and asbileh (pl. sabyl) and galleries. Five of the seven ribats we know in Jerusalem are Mamluke. The other Mamluke buildings which reflected the rising population figures included many market places, public baths, water fountains and aqueducts.47 Ironically Mamluke splendour seems, however, to have grown amidst the ruins and squalor that the preceding Ayyubide ill administration had inflicted on Jerusalem. The destruction of the defences, the removal of all defence arms to Damascus, the handing over of Jerusalem- except for the Dome of the rock, to the Crusaders for two decades, the severe earthquakes and the hordes of nomadic brigands constantly swooping down and looting the city had left deep scars.48 Mamluke buildings clustered away from the ruins in defined areas. The vicinity of Al-Haram el-Shariff received great attention and was lavishly built up. In contrast the abandoned ruins, the mud roads, the poor hovels startled the fifteenth century Pilgrim Felix Fabri who was overwhelmed by the beautiful stone houses and signs of local affluence, 'I visited this morning the 28th. of July many markets and the street of the cooks, where I saw many things for sale, and a great number of people buying from the numerous kitchens... because the people here do not cook in their houses as we do in our country; they buy their food ready made from these kitchens. The cooks are
excellent and very clean and you never see a woman near the fire... One may conclude that in the whole East there is no female who can cook the simplest cake."49

Jerusalem became a popular Sufi-centre as witnessed by the innumerable khawaneq and zawaya that were built. These centres for intellectual and spiritual mediation also provided comfortable living conditions for the Sufi students; over twenty seven colleges were built in the Mamluke period.50 Though the Shafite school of Islam was the leading school of thought - a position of leadership established by Saladin - nevertheless the other three schools of Moslem jurisprudence were equally visible. The Hanbalieh school, Malikite and Hanafi schools did have a strong presence. If this diversity expresses anything, it is the cultural heterogeneity and cosmopolitanism of Jerusalem at that period represented by a minimum of 22 countries51 Little wonder the amazing long list of scholars who lived in Jerusalem that Mujir el-Din provides a detailed list of their names and works.

The Mamluke building up of Jerusalem has a distinct pattern; a series of madarees, zawaya, arbitah and mausoleums would cluster around one of the gates leading into the el-Haram al-Sharif. Haret Bab el Hadeed, named after the central western gate of the mosque, illustrates the pattern of dense Mamluke building up of the city. In 1296, directly outside the gate, Ribat Kurid was built. Less than a century later, across the street, on the opposite side, al-Madrassah al Arghunieh was erected, in 1385. A few metres further one passes by al-Madrassah al-Hanbalieh dating back to 1379. Next to Ribat Kurid and partially on top of it is al-Madrassah al-Jawhrieh built in 1440 and on the opposite side of the street stands al-Madrassah al-Mazharieh.52

Not only princes and sultans built up Jerusalem but wealthy residents played an important role in giving the Holy City its architectural landscape and its cultural splendour. A cunuch, Jawhar al-Qanqabai, built a school known as the Jawhariieh near Bab el-Hadeed and in other places.53 Wealthy merchants played a great role in financing the building of religious foundations. Al-Madraseh al-Salamieh for example, outside Bab al-Itm, was built by al-Khawaja Majd el-Deen Abu el-Fida. Woman's role in giving Jerusalem its architectural treasures is no less significant. Al-Hajjah Sufra Khtun built al-Madrassah al-Barudeieh in 1367. Agel Khatun built al-Madrassah al-Khatunieh 1380.54 This female initiative started a tradition that found its zenith in the Ottoman Period beginning with Roxelane, wife of Solomon the Magnificent, and culminating with the Waqf el-Budeiry by a lady from the el-Budeiry family early in the twentieth century. Strong willed ladies as administrators of Awqaf is still very common in Moslem Jerusalem.

Until Mujir el-deen's in the fifteenth century, no writer addressed himself to describe Jerusalem's organisation as a conglomerate of Harat, neighbourhoods. The judge of the Muslim court, in charge - among many other religious duties - of the registry of the Muslim endowments and various real-estate transactions, contracts sales, rent hikr etc. - the terms he uses in describing the social geographic boundaries of properties are, as such, conditioned by exigencies of an archival nature. In his fifteenth century description of the Harat - which reads like a contemporary guidebook to Jerusalem - the Israeli reductionist tripartite reification of hara along
major socio-religio economic units, dissolves to ideological mythologisation in a blatant attempt to undermine the Arabic character of Jerusalem. What follows is a partial quote of Mujir el-Deen's listing of one part of Jerusalem Harat that surround Tariq el-Waad, 'Harat of Jerusalem are: Haret al-Magharbeh, near the western wall of the Mosque and a Waqf for the benefit of the North Africans. Haret al-Sharaf formerly known as Haret al-Akrad. Haret al-Alam which has derived its name after a man named Alam el-Deen Soliman who lived there. North of Haret al-Sharaf and within it lies Haret al-Hiadrah in relation to the religious group with the same name and Haret al-Yahud next to Haret al-Salateen from the west and including Haret al-Risheh. And the inner Haret Sahini west of Haret al-Yahud. Haret al-Dhawieh north of Haret Sahini. As for Haret Bani al-Hareth it lies outside the town near the Citadel...55

The listing of Harat sheds light on the highly controversial Israeli attitude towards the Old City. The contemporary reader is surprised that the general three quarters, Harat, into which Jerusalem is subdivided: Moslem, Christian and Jewish is misleading. The hara as a discreet separate disjunctive unit in the sense of a ward or a neighbourhood does not exist. Note Mujir el-Deen's description of the location of Haret al-Risheh within Haret al-Yahud or Haret al-Salateen within Haret al-Sharaf and north of it. Invariably the referential value of the signifier, word, hara is anchored through the signifier khat, literally meaning a street that runs across the city north to south or east to west whose gestalt represents a grid. Only by situating the hara in the context of a number of adjacent Harat in relation to a khat, is signification produced; the exact address of various properties. Following is a sample of his zoning of Jerusalem Harat in conjunction khat as a structuring principle.56

Khat Wad al-Tawaheen (The Line of the Mills): It is the great road extending qiblata bisham, (from the direction of prayers, south, to Damascus i.e. north), from Daraj al-Ein to bab al-Amud....In this khat are found many known streets namely: Haret Bab al-Qattaneen...and Haret Bab al-Hadeed, adjacent to Suq al-Qattanin from the north, and Haret Bab el-Nazer, one of the gates of the Mosque. Facing it from the west Aqabat al-Suq known also as Aqabat al-Sit ... followed westward by Suq al-Zeit and east of it is found Ziqq Khat al-Tawaheen. From the east, Haret al-Ghawanneh, adjacent to the mosque from the west, in relation to its residents of the Bani Ghanem tribe facing it from the west Aqabat al-Zahirieh in relation to an old zawieh (Sufi school) there known as al-Zhahirieh and from the qiblah another aqabah called As-sudan... From the north is a Ziqq known as Qanater Khudeir and at the top of the Aqabeh from the west is Suq al-Fakher, in relation to Fakhir al-Deen the director of the al-Madrassah al-Fakhirieh and in it are the masabeh, soap factories, where soap is manufactured. Haret al-fakher from the western side moving northward is Haret Bani Murrah, the quarter of the Bani Murra tribe..and west of it is Haret al-Zara'neh, Zara'neh tribe, and Haret al-Malat the latter is in the periphery of the city next to the Haret al-Nasara in the west...and Haret Bab al-Amoud and that is the end of Khat Wad al-Tawaheen and the end of the city in the north western part. Within it lies Haret Bani Sa'd, the tribe of Bani-Sa'd, and Haret al-Qaselah from the east. Followed in the north by Haret al-Shyuckh and still north lies Haret Bani Zayd
and within it is a ziqaq known as the Saadeyeen and Haret Bab el-Sahirah and there ends the city from the north.

And Haret Daraj al-Milawiyehe next to Haret al-Qasseleh in the east and from the qibleh, south, Haret sharaf al-Anbia' now known as Haret Bab al-Dwedarieh, encompassing Aqabet al-Mihmazieh leading to Bab al-Sahirah ... And Haret Bab Huttah north of the Mosque followed by Haret al-Mashariqah ending in the northern wall of the city .and Haret al-Ghurieh from Bab Isbat, ending in the northern wall of the city and a Hosh there known as Al-Samet.

Within the general divisions of Khat and Hara various subdivisions are used, ziqaq, alley, suq , market and hosh, courtyard. The individual Harah, in Mujir el-Deen's usage, obtains its nomenclature from a salient features such as its proximity to one of the major gates of the city, as in the case of Haret Bal al-Sahira, or to a gate of the Aqsa mosque, Haret Bab al-Hadid. It can also be descriptive of geographical position mainly on an aqabeh, denoting a street going uphill with correspondingly very steep stairs, e.g. Haret Aqabet as-Sit, Aqabet al-Mihmazieh. In these latter cases the nomenclature is of a more complex structure, the geographic feature becomes the prefix to the landmark. A Hara may also obtain its name from the name of its inhabitants, e.g. Haret al-Sadiyeen. The bani Zayd tribe and the bani sa'd tribe - or Haret Bani Zayd - both were resettled in Jerusalem by Saladin three centuries earlier. In this Hara a famous theological college, al-Mihmazieh, al-Milawiyehe is situated. A khat can be interchangeably called hara, khat el-Tawaheen is also referred to as Haret al-Tawaheen. By extension any hara can be subdivided into numerous Harat. As such within Haret Bani Zayd you may find Haret al-Sa'diyeeen. In Mujir el-Deen one reads that the Christian Quarter, Haret al-Nasara, contained within it a number of Muslim Harat, not outside in the periphery but distributed within it.

One concludes that the use of the words hara, khat, sharee was simply a system of classification in a pre-industrial city whose urban planning did not depend on the parallel horizontal and vertical grid system. Hara may refer to almost any street, however small it maybe, but with a distinctive feature that sets it apart from other streets and ascribes to it its own individual identity. The flexibility in the application of the concept of harah as a method of giving addresses was also observed in the Muslim court registry in Gaza pertaining to the nineteenth century archives and diagnosed as a chronic 'imprecision' in the use of technical words.\(^{57}\) The same accusation, on a different level, is repeated in the interchangeable use of the words, khanqah and zawieh. Interestingly this lax Arabic attitude in the use of signifiers of words, was observed and commented on by Al-Jahez, the tenth century philosopher. The casual imprecision, al-Jahez explains, is due to the overvaluation of the communicative aspect of the message, (the signified), and the general underestimate of the vehicle of communication, (the signifier); meaning is more important than the terms or the words used to express it.\(^{58}\) Reading Mujir el-Deen, one may conclude that the division of the city into Harat was on purely functional grounds namely to delineate the location and boundaries of real estate to satisfy the pragmatic needs of Jerusalem's archives in identifying addresses.
Solomon the Magnificent (1520-1566) was the greatest Turkish sultan and his building zeal resembled that of the glorious days of the Umayyads and the climax of the Mamluke period. When Solomon the Magnificent conquered Jerusalem it was defensive and aesthetic principles that guided his building strategy. By choosing the chrysanthemum flower, (lawanda) as the decorative motif either in stucco or carved in stone over doorways of buildings, the walls of the city and as the main decorative motif of the seven new water fountains (sabyl) that he had ordered - in his effort to solve the problem of water shortage in the city - Jerusalem certainly deserved the new epithet Zahret al-Madaen, Flower of Cities.

Jerusalemites gratefully remember that the beautiful wall surrounding the city was built by Solomon the Magnificent. The primary reason was to restore peace and stability by protecting the city from the marauding Bedouins, for Jerusalem had practically no defences since the son of Saladin, Isa, destroyed the fortifications in 1219. Water, one of the chief problems in the city, was solved through Solomon's building of the six magnificent sebils and having water conducted to them via aqueducts from Urtas in 1536.

In 1551 one of the most important Jerusalem endowments was established by Roxelane, the wife of Solomon: Khasay Sultan which has become until the present day a major Jerusalem landmark. The building consists of a mosque, a khan (caravansary), a ribat, a madrasah and a mathakh- (public kitchen) for sufis, students and the Waqf beneficiaries. The endowments attached to it are innumerable and consisted of a number of villages and farms near Ramleh. After Roxelane's death Solomon added more villages and farms in the area of Sydon to it. Until now the tradition continues; children with pots queue from early in the morning to receive their daily porridge. Throughout the month of Ramadan all Jerusalem's population have their portion of mutton, rice and yoghurt from its kitchen whose chimneys, it is believed, were designed by Sinan.

By the sixteenth century Al-Quds el-Sharif has grown architecturally into the city we have come to know with the Harat amply described by Mujir el-deen a few decades earlier. The Palestinian Elite, the Awqaf, endowments, of which they became direct beneficiaries as heirs and/or administrators, the innumerable politico-religious functions initiated by Saladin, had by now, four centuries later, become an established institution. The Waqf system used to provide a major source of income for Jerusalemites either as direct beneficiaries, as heirs, to private Waqfs or as civil servants in the rather big bureaucratic system that had developed to administer the Awqaf.

The pretentious smug elite now emulated the Ottoman aristocracy in their dress, manners, housing and furniture, number of slaves, eunuchs and conspicuous consumer life style (usually Jerusalem's elite lived very frugally since they were theologians in their majority). Their life style depended on the great endowments bequeathed them by the Ayyubides, Mamlukes and the early Ottoman veneration for Al-Quds el-Sharif. Unlike other cities under Ottoman sovereignty Jerusalem and its elite was often set up as an independent administration with unmediated access to Topkapi!
This is the Jerusalem whose passing away Jerusalemites so lament. The architecture, the palaces, the hamams, the seyyls survive, crumbling, but they are there testimonies to a glorious past. The city, the living reality, the people have changed; contemporary Jerusalem is a slum. Al-Quds al-Sharif with its institutions catering to the life that has evolved in the holiest city on earth is a sad backdrop for the contemporary Palestinian tragedy. In fact the Jerusalem that our generation of Palestinians have inherited remains a maze of mausoleums turbeh and of public kitchens t'kiyeh, of madares, medieval colleges, zawaya, khanat and hammamsat. Ayyubid buildings mix with Mamluke facades amidst Ottoman opulence in a dazzling profusion all in various states of decay inhabited mostly by poor illiterate squatters.

The same sun shines, the new golden dome glitters but the centre for the dissemination of moslem knowledge has eclipsed; the twentieth century is a dreary chapter in Jerusalem's illustrious history, this is our 'dark ages'.

Jerusalem's economic infra-structure was set up to depend on the Awqaf, endowments to provide the means with which the various institutes, religious, educational and cultural were financially maintained. From the Ayyubides, Mamlukes and Ottomans the Jerusalem elite, as beneficiaries or functionaries, inherited a great number of Awqaf whose revenue yielded the cash necessary to finance the maintenance and administration of the many mosques, colleges, Sufi centres, public kitchens, hospitals and the everyday life of the Jerusalemites. The Ottomans respected and reinstated both Muslim and Christian endowments. The Muslim institutions were not only protected but also increased in number. In the al-Mahkamieh el-Sharieh register, archive number 522, documenting the first thirty years of Turkish presence over thirteen new entries for the benefit of various Waqfs, both public and private, were endowed to finance diverse public institutes ranging from elementary schools to mausoleums, katateeb, arbitah, masajed, turab and as supplementary source of income for individual family beneficiaries, heirs of private Waqf. Public endowment would include provisions for the welfare of Quran reciters, preachers, Sufi leaders and the poor. In the second part of the 16 century numerous endowments were registered in addition to the great public kitchen, caravansary, Sufi school of thought with private residential quarters, mosque, ablution font in the Khasqy Sultan complex. Several endowments were also attached to the maintenance of the aqueducts and pools leading from Urtas to Jerusalem including a number of villages in Mount Hebron.\textsuperscript{64}

By the eighteenth century Jerusalem had already fallen into despair once again. The collapse of the feudal system, the timariyyat, produced such a state of chaos that outside the walls danger came in the form of the vicious brigand attacks by unruly Bedouin tribes. The walls of the city became its shelter. The city gates were open only from sunrise to sunset. The Awqaf deteriorated and of sixty madarasehs listed in the Mamluke period only 40 remained in 1672 and only 200 classrooms survived around the Aqsa mosque.\textsuperscript{65} The state continued to finance the various employees in its Waqf bureaucracy. In the Aqsa mosque alone over 800 officials were employed.\textsuperscript{66} At times the teachers in the colleges exceeded in number their students e.g. al
Madrassah al-Tizieh in 1574 had thirty six teachers but only 26 students were registered.

The expenditure of the Waqf kept increasing while the condition of the real estate deteriorated as a result of earthquakes, negligence and wear and tear of time and use. Nevertheless, the Awqaf had to continue its financial responsibility to provide food and lodgings with all its necessities to all the Sufi darawish from al hind wal sind, India, wa balackh, Persians, Kurds, Tatars, Mongolians and Turks who lived in the galleries of the mosque.67

The eighteenth century also witnessed the economic and intellectual public life in Jerusalem falling into total decay. Although in private homes this was the age of the educated gentleman as witnessed by the development of the private family library but this increase in individual scholasticism had no effect on the Muslim Colleges. Those interested in good education went to Egypt. It is estimated that by the middle of the eighteenth century only 36 schools had remained. However with almost no student attendance. The danger lurking outside the walls in the form of Bedouin brigands made Jerusalem no longer a safe city to travel into or out of. By the end of the eighteenth century the colleges had almost totally disappeared and by the beginning of the nineteenth century none of these colleges had remained. Even in the galleries that surround the Dome of the Rock had disappeared to become private properties of Jerusalem patrician families; the beneficiaries of the Waqf who were once entrusted with its administration now took over as private their previous living quarters.68

The deterioration and dissolution of the Waqf system had began much earlier. By the 15 century some of the villages endowed to finance major public institutions had already been appropriated as private properties by individual families... . The dissolution of the Awqaf properties reached its climax by the end of the eighteenth century through multiple causes. The general deterioration of the buildings rendered them useless. Use was made of law to transform the character of the endowment itself. By the beginning of the nineteenth century the process had increased its pace with the Awqaf being partitioned off and its ownership moving to individuals either through long term rent, hikr, or by the exchange of cash money for these buildings, i.e. sale of it. This long term rent in fact lead to its passing into new owners almost invariably non-Muslims.69

The most often solution to establish private rights over a Waqf is the legal process, still in practice called khulu (key money). The Khuluu system permits the tenant to restore the Waqf property, thereby protecting the building from total collapse. The money spent on the real estate would allow the tenant inalienable right to the Waqf property. Between 1805 and 1820 the new khulu legal process registry in the Muslim court exceeded seventy transactions.70

Walking down the streets of Al-Quds one drowns in religious association but it requires little effort to become cognisant of the social economic activities buzzing everywhere; the people, the shops and the cafes, the highly ornamental façades of the madrasah, medieval colleges, the cool shadows underneath the qantaras, covered passages, the aromas that emanate from coffee shops, spice merchants, restaurants
and houses reflect a way of life, an architectural economic religious social aesthetic. A total cultural system, Al-Quds is not merely a religio-political symbol; the Holy City is the home for hundreds of generations of Palestinian Christians, Jews and Moslems who had grown up in one or other of its Harat.

Notes

1 Little: 207.
2 Mujir El-Din. 1904: 52.
3 El-Aref. 1956: 91.
4 Little: 191.
5 For detailed explanation refer to previous essay, Significance of Jerusalem in Islam.
6 Mujir El-Din. 1904: 52.
7 Wilkinson: 123-128.
8 El-Assali.
9 El-Aref, El-Assali, Attiyeh, Mujir el-Din. [etc...].
10 El-Aref, El-Mubayyed, Assali, Attiyeh. See also Philip Hitty.
11 The classical literary discourse, Virtues of Jerusalem, centred around the sacred character of Jerusalem in Islam.
13 El-Aref. 1956: 83.
14 El-Aref. 1956: 84.
15 El-Aref. 1956: 84.
17 El-Aref. 1956: 87.
18 Mujir El-Deen. 1904: 54.
19 Mujir El-Deen. 1904: 54.
20 Mujir El-Deen. 1904: 54.
21 El-Aref. 1956: 131.
22 Al-Hiary. [n.d.]: 187
23 Al-Hiary: 169
24 Al-Hiary: 172
25 Al-Hiary: 172.
26 El-Hiary: 192.
27 El-Aref. 1956: 192-173.
28 Little: 207.
29 El-Aref. 1956: 176.
30 Schoelch, A. 1993: 293.
31 El-Aref. 1956: 177.
33 El-Hiary: 192.
34 El-Hiary: 192.
35 El-Hiary: 189.
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Mujir el-Deen. 1904. *Al Uns 'l-jalil bi tarikh 'l Quds wa'l-Khalil, I & II*. Cairo, 1293. 1904


JERUSALEM THE GOLDEN?

- The impact of politics on the environment of Jerusalem in the 20th Century -

Robin Twite (IPCRI)

Introduction

‘Thus the Holy city, [...] with the frequent shifting of events, often changed masters, and, according to the character of each prince, it experiences both bright and cloudy intervals. Its condition like that of a sick man, grew better or worse in accordance with the exigencies of the times, yet full recovery was impossible’ wrote William of Tyre in the 12th Century.\(^1\) Unhappily, his comments have a contemporary ring to them.

For almost the whole of the last century Jerusalem has been the centre of political dispute and rivalry, changing hands with a remarkable frequency - first Turkish, then British, then divided between Israel and Jordan, and today ruled by Israel but the subject of Palestinian aspirations. The various political agendas of those who have ruled, rule, or aspire to rule in Jerusalem have directly affected the environment and quality of life in the city.

It is the aim of this article to look at the ways in which the struggle for Jerusalem and the political aims of those who have controlled its destiny, have affected the city from an environmental point of view since 1917. Have political agendas been positive or negative in their impact? What effect have they had on the city from an aesthetic point of view? What influence on the way in which the inhabitants of the city live and the quality of their lives?

1. The city in the time of the British mandate

‘We had completed the restoration of the City Walls, Ramparts, and the Citadel; repaired the Damascus Gate, Herod's Gate, and the Zion Gate; and removed the offence of the Turkish ‘Jubilee’ Clock Tower from the Jaffa Gate. Under the provision of a Town Planning Ordinance, developing and legalising my first arbitrary Proclamation, we had maintained the architectural style of the Old City. We had made a Civic Survey of the City and surrounding district and enacted a definitive town-planning scheme for the Old and New Cities.'\(^2\)

Thus Sir Ronald Storrs, perhaps the most active official in the early days of the British Mandate, enumerated the Mandatory contribution to the well being of the city of Jerusalem and its inhabitants in the first ten years of its existence. Elsewhere in his memoirs he records that the British brought fresh water to the city, which throughout the nineteenth century had remained almost entirely dependent on cisterns.

In spite of the faintly self-congratulatory tone of Sir Ronald's comments, there is no doubt that the coming of the British to the city in 1917 was, from an environmental
point of view at least, very positive. In the last decades of the Ottoman Empire there had, it is true, been substantial construction of religious buildings (convents, hospices and schools) as well as rapid growth of residential quarters outside the walled city - but the water supply had remained primitive - the incidence of eye disease was directly ascribed to the use of water from cisterns which were not regularly cleaned out - and public services of a very elementary kind.

The British brought with them their traditions of local government and a determination, based on their sense of responsibility for Jerusalem, site of the crucifixion and the resurrection, to preserve and embellish the city.

Today the most famous of their legislation relating to Jerusalem is that which forbade new building in the city to be built in anything but stone. It is still in force today, though now a thin veneer of stone facing is acceptable.

The local colonial administration had, it is true, to contend with the parsimony of the British Treasury which demanded that all colonial possessions should, as far as possible, be self supporting. However this had its good side. It limited the scope of the development which could be carried out by the Mandatory administration and ensured that improvements should be gradual in scope and modest in their impact on the historical heritage of the city - no great boulevards were driven through Jerusalem, few grandoise government buildings were constructed. Shortage of funding also played a part in making the authorities anxious to encourage building projects brought forward by Jewish groups that wished to live in the city and to Arab householders to raise their own homes in new suburbs such as the Greek Colony or Talbieh.

The Jewish neighbourhoods of Talpiot, Rehavia and Beit Ha-Kerem were conceived of as 'garden suburbs'. They had their origins in work done in Britain and elsewhere towards the end of the 19th century to establish communities where urban dwellers would have the opportunity to create gardens and enjoy civic amenities in a green and semi-rural setting.

In 1912 Professor Otto Warburg of Berlin was asked to check the possibilities of building a garden city in the vicinity of Jerusalem. The idea gained the support of Dr. Arthur Ruppin and others prominent in the Zionist movement. Talpiot, the first garden suburb in Jerusalem, had 'all the characteristics of a garden city settlement: One or two-family houses with gardens and areas for auxiliary farming, a public square, shaded avenues and an imposing centre with important public buildings'.

Designed by architect Richard Kaufman it provided a very attractive living environment, though at first, before the trees grew, this was less apparent than it was later. The Jewish suburbs of Jerusalem which were inspired by this movement, were pleasant places to live. They fitted in well with the concepts of the well known English town planner Patrick Geddes, who in 1919 was asked by the Mandatory authorities to consider the future of Jerusalem and by the Zionist movement to prepare a plan for the proposed Hebrew University of Jerusalem. This is not the place to discuss Geddes concepts about the future of the city or why they failed in the end to be realised - they are important here as demonstrating the desire of the Mandatory authorities to see the city beautified and preserve its special quality. Such concepts were behind all the successive plans for the city which were drawn between 1920 and
the end of the Mandate - these limited building round the Old City, restricted high rise
building so as to preserve the visual unity of the landscape, and controlled citing of
industry - none envisaged the growth of the city to today's proportions.

Jerusalem during the British Mandate was fortunate in the quality of its
architects - the European Bauhaus-influenced architects of much residential property
built for Jews in Jerusalem worked alongside local architects who built for the rich
Arab residents of the new quarters of Baka, Sheik Jarrah and Talbieh villas of eclectic
style but excellent workmanship, whose distinction is evident today in suburbs such as
the Greek Colony or Talbieh - even though most of them have been subdivided
among a variety of tenants or made use of for schools or other public services and so
lost their aristocratic ambience.

The British architects who worked on the construction of the Post Office, the
High Commissioner's Residence and other official buildings were sound professionals.
Nor were the architects of new Christian religious buildings and of other public
buildings such as the Rockefeller Museum (on the embellishment the famous British
sculptor cum artizan, Eric Gill worked for a while in the late thirties, falling in love
with Jerusalem in the process) to be scorned. In his definitive study of the
architectural history of the city 'Jerusalem Architecture', published in 1995, David
Kroyanker describes the architecture of the Mandatory period with enthusiasm and
appreciation.

In short, the period of the British Mandate was, for Jerusalem, a positive one
from an architectural and visual point of view. The style and quality of building, both
private and public, added to the attraction of the city without creating over-crowding
or damaging its special quality which derives in part from the contrast between the
urban environment and the bare, but evocative, hills surrounding it.

The municipal services of the city were also brought to a quite another level
than they had been previously - water, electricity supply and communications all
benefited. The whole city was supplied with piped water and with electricity. There
were, of course, still very poor sections of the city both within the wall and in the
orthodox Jewish suburbs outside it but to all of them basic services were provided.

Jerusalem in the British Mandate housed a population which, though it was not
especially prosperous and suffered from tension between its two major communities,
Arab and Jewish, was nevertheless developing on sensible and rational lines.

In short, if the term 'sustainable development' had been coined in 1940 it would
have applied to the Jerusalem of that time. The British Mandatory authorities
encouraged the gradual development of the city whether by Arab or Jew. In so far as
they had an ambition for Jerusalem it was to demonstrate that under British rule it was
a city worthy of its heritage. While Jerusalem was not high on the list of priorities for
many socialist Zionists (who preferred to see the Land of Israel reclaimed for
agriculture and had little sympathy with the orthodox Jewish preoccupation with
Jerusalem) still the influx of Jewish capital lead to the steady development of well
planned suburbs and to the creation of a University on Mount Scopus, the buildings of
which demonstrated a satisfying mixture of oriental and western motifs. It was the
increasing prosperity of the city under Mandatory rule which enabled the rich Palestinian families to build homes of considerable charm and distinction.

2. The city divided

However, even in the quietest years of the Mandate there had always been fears that the latent hostility between the Arabs and Jews in the city would break out into violence and so it did. Each outbreak of violence - in 1929, from 1936 to 1939 and from 1945 to 1947 - lead to physical and social damage to the city. By the end of 1947 large sections of the centre of the city had been turned into miniature fortresses by the British and the signs of major incidents of violence were evident in Ben Yehuda street, at the King David Hotel and elsewhere. The two communities were estranged and the conflict of 1947 - 1948 only served to underline the depth of that estrangement.

It also did much damage to the city. In large parts of the areas where fighting took place buildings were damaged or destroyed. The ruins of the Jewish quarter in the Old City, the abandoned Arab houses in Baka and elsewhere, and the empty shell of the huge Catholic hospice of Notre Dame, all bore witness to the severity of the fighting. However, the biggest single damage which was done, was to physically divide the city into two.

The rival ambitions of Arabs and Jews resulted in a division which was arbitrary and detrimental to environment and quality of life of the city as a whole. For the Jews the loss of access to the Western Wall and of the majority of the ancient sites and buildings which make up the historical legacy of Jerusalem, was a severe deprivation, while the Arabs were cut off from the most economically lively sections of the city. Unsightly concrete barricades and minefields were put into place along the border between the Israeli and the Jordanian held section of the city. Both the Jewish and Arab sectors of the city became far less attractive to live in than they had been previously. The Jordanian sector half sank into a quiet, easy going provincialism.

Economically, things were difficult and the local leaders in the city resented the fact that their interests were subordinated to those of Amman, but while there was no development to speak of, the Jordanians maintained the city reasonably well (with the exception of the Jewish quarter within the wall which remained in ruins).

Since the border to the West was closed, travellers to Jordanian Jerusalem from outside the region had no choice but to return via Amman or fly from the small airport of Kalandria. Save at Christmas and Easter, when Christians from Israel could cross to East Jerusalem, only diplomats, UN personnel and a few favoured tourists, could use the quaintly named Mandelbaum gate and cross from one side of the city to the other. To walk up (as I did) to the Jaffa Gate from the Jordanian side, see the gate blocked and military posts on the Tower of David, the streets almost empty and the owners of shops nearby plunged into a stupor from which the occasional tourist could scarcely rouse them, was to feel how much East Jerusalem had lost by division.\(^7\)

Attempts were made to plan for the Eastern half of the city some of which according to architect and planner Arthur Kutcher\(^8\) envisaged building on all the open
slopes round the Old City, except where there were cemeteries, but luckily the lack of funds for development prevented the realisation of these.

On the West things were more lively. The Israeli Government declared Jerusalem its capital from the outset, the meetings of the Knesset took place there and plans were laid for the construction of government offices and for a new university campus (the old one having been isolated during the conflict and finding itself 'mothballed' on Mount Scopus). Construction also began on housing for new immigrants, something which was sorely needed as in the period from 1948 to 1953 the Jewish population of Israel doubled. The Government was anxious to increase the number of Israelis living in Jerusalem. New immigrants were encouraged to move into housing vacated by Arabs as a result of the division of the city and the construction of new apartments for them began.

An initial plan for the future development of the city was drawn up by H. Rau and, somewhat amended, formed the basis of the city's legal plan which was approved in 1959. This envisaged extensive parks, limiting height of buildings of five stories, and preserving the skyline by prohibiting building in certain key areas.9

However, though anxious in the long run to make their half of Jerusalem a fitting site for the capital of the new state, the Israeli authorities, whatever their long term aspirations, had little time to worry about adhering closely to a plan or maintaining the quality of architecture in the city. Their first priority was to provide housing for their people. Apartments were hastily constructed on sites chosen as much for their strategic location as for their desirability. Sites for certain housing schemes were chosen so as to prevent infiltration by Arabs who had fled their homes in the West of the city. Such housing would effectively prevent such infiltration and in the event of open hostility would offer an effective barrier to the invader. On the road to Bethlehem, across the hills of what came to be called Catamon and Kiryat Yovel, and elsewhere in the city, new suburbs arose. Unlike the older suburbs of Rehavia and Beit Ha-Kerem these were of cheap construction, since the new state had to meet enormous demands on its limited budget. While the need was great and there was no alternative but to build quickly, the building of these new suburbs constituted, together with the division of the city; a definite setback to the environment and quality of living in Jerusalem. The architects who built them were compelled to choose the cheapest possible solution and the constraints on building such as the ordinance already referred to, mandating that all new building should be in stone or stone clad, were largely - if not absolutely - ignored. These mandates were honoured only in a perfunctory way by the addition of a small amount of cheap stone facing to buildings all too obviously built of concrete.

Until about ten years ago many of the suburbs constructed between 1948 and 1967, and mostly occupied by families which had arrived since 1948, were noted for their social problems. Both they, and the areas which had previously belonged to Arabs such as Baka and Musrara, were lived in by populations with low incomes and prey to simmering discontent. Increasing prosperity has, however, done much to alleviate their situation.
Residential areas close to the border with East Jerusalem were environmentally neglected during the period 1948 to 1967. They were less than desirable locations since from time to time people moving close to the border were killed and injured in sporadic incidents of firing between Jordanians and Israelis. People who had any alternative, tended to live elsewhere with the result that such areas became semi-slums.

Only in 1967 did these people find that they were, after all, living in desirable central locations in a physically united city. At least one such area, Yemin Moshe, is now one of the most desirable locations in the city. However, those who lived there from 1948 to 1967 were after 1967 for the most part unable to resist strong pressure from the Municipality of Jerusalem that wished to redevelop the area. They were moved out and the area became an exclusive suburb, much of it second homes for wealthy Jews living in the from the Diaspora.

In the 20 years between 1947 and 1967 municipal services on both sides suffered because of the division of the city. The cutting off of supply to Jordanian East Jerusalem from springs within Israel lead to severe water shortage and in 1960 it was estimated that 60 per cent of the houses of East Jerusalem were without running water. Severe dislocation of electricity supply also took place.\textsuperscript{10}

The sewage disposal system of the city, already outdated in Mandatory times, became progressively more so as time passed. Most sewage was simply taken out of the city in pipes and poured into valleys some distance away from the centre. Only a small percentage was treated at existing plants.

Throughout most of the period 1947 to 1967 the population of West Jerusalem found themselves living in a town which felt suburban, without a definite centre, and deprived of much that for the world at large constituted the charm of Jerusalem. The loss of access to the Western Wall was felt by all, religious and non-religious alike. As time went by, the gradual rise of new public buildings, the new University campus at Givat Ram, the Government offices on the hills nearby, the Knesset and the National Museum, all combined to give the Israeli section of the city more sense of being a true capital, but geographically and in terms of quality of life it was still only half a city.

Divided Jerusalem, Arabs on one side and Jews on the other, historical legacy on one side and development on the other, was recognisably unsatisfactory for both sides. It is significant that today in 1996 almost no voices are raised in favour of re-dividing the city by physical barriers - all parties want to see it physically united though they adhere very different concepts as to how the resulting physically united city should be governed.

3. The city ‘united’ - 1967 - 1996

In 1967 Jerusalem was variously ‘liberated’, ‘conquered’ or ‘united’, the choice of words depending on the point of view of the beholder. Israeli rule extended over the whole of the city.

In 1967 the city was substantially larger than that of 1947 - its population had doubled. While large areas round the Old City and along the former border between
Israel and Jordan formed a mined and desolate no man's land, out towards the West stretched the uninviting new suburbs of Catamon and Kiryat Yovel while the older Jewish suburbs had also expanded and in the process lost much of the 'garden' quality which they had had when they were built. In Arab East Jerusalem there had been some limited construction most of it expansion of existing villages on the periphery of the city and on the road between Jerusalem and Ramallah.

Israel saw the 'deliverance' of Jerusalem as a miracle. The Israeli authorities almost immediately declared the city annexed and expanded its boundaries to embrace a far larger area than previously, a move which was dictated solely by political considerations. Before the war of 1967 the total area of Jerusalem was about 38,000 dunams but by 1993 the borders of the municipal area had increased to 123,000 dunums. Most of this increase was the result of legislative action immediately after the end of the war of 1967 and brought many Arab villages into the Jerusalem municipal area. As one observer saw it: 'the city was surrounded on three sides (north, east, and south) by Arab settlements. The need to control these axes was one of the factors determining the delineation of the city limits'. The local government which had existed under Jordan in East Jerusalem was abolished and many of the employees of that system passed into the service of the Jewish municipal authorities. Work began to clear the area round the walls which had been no man's land and feverish planning for the reconstruction of the Jewish quarter began.

Within twelve days of the unification of the city under Israeli authority the old Mograbi (Moroccan) quarter which lay in front of the Western Wall was demolished - its inhabitants having been moved out - to create a plaza in front of the wall for the convenience of worshippers and to enable certain public ceremonials to be carried out there. How many Palestinians were displaced from the Mograbi quarter and the adjacent area of the Jewish quarter, on the borders of which some Palestinians had lived since 1948, remains a matter of dispute. Israeli sources put the figure at between 1000 and 2000 while at least one Palestinian claims that 20,000 were evicted.

In 1968 new master plan for the city was hastily put together by Hashimshoni, Shweid and Hashimshoni. This preserved open space round the Old City but envisaged a massive commercial centre in nearby Jaffa road, fed by major new roads which would have formed a grid-pattern. According to Kutchner the intention which lay behind this plan was 'to physically express and thereby help to bring about, an united Israeli Jerusalem'. This plan according to Kutchner typified an approach in which 'a new way of thinking about Jerusalem has sprung up: the city is a resource to be exploited, its spiritual and visual qualities are resources to be bought and sold'. In the event the plan was violently attacked by the international committee of architects that the Mayor, Teddy Kolleck, had assembled to help with thinking about the planning of Jerusalem and by environmentalists. In the event it was never adopted. Instead development of the centre proceeded upon a more pragmatic basis; but the thinking behind the plan remained influential and the massive road building projects and road development, that are currently being carried out, owe much to the concepts of the 1968 plan.
4. The benefits of a united city

There is no doubt that the first twenty years of Israeli rule over united Jerusalem (1967 - 1987) brought with it certain environmental advantages for the city as a whole; in part at least due to the election of Mayor Kolleck in 1968. Kolleck brought to the leadership of the city strong and decisive will. He put great emphasis on the creation of a series of parks around the walls of the Old City which had been proposed by almost all the planners who during British Mandatory times had worked in the city. Large areas of land were devoted to this purpose in spite of opposition from landowners and contractors. The parks created by Kolleck's administration are aesthetically pleasing, constitute a lasting contribution to the well-being of the city, and are used by both Israelis and Palestinians.

The reconstruction of the Jewish quarter was also for the most part to maintain the character of the Old City. Only a few buildings in the quarter, such as the monumental Wohl yeshiva, were out of scale, heavy and forbidding. If the quarter when rebuilt had slightly artificial feeling, somewhat as if it was a stage set, this was largely because it was new and had not been lived in. Today the normal life of its inhabitants has removed something of the sense of unreality which was notable when it was first built.

Nor did this process of making positive improvements to the aesthetic appeal of the city stop after the first few years of Israeli control. Writing in 1985, David Kronyanker was able to create various plans for improvements, many of which have since been realised, including the construction of the handsome promenade and related park near the former British High Commissioner's residence (now housing the offices of the United Nations) and the shaping of Ben Yehuda street and its environs into a pedestrian area.¹⁴

During this period the quality of life of the Jewish inhabitants of the city improved in a number of ways. There was access to the Jewish Holy Places, rapid increase in tourism, industry began to develop (albeit slowly), and until 1987 Israelis moved relatively freely in East Jerusalem. Moreover some of the new buildings built as part of the creation of a capital city for Israel have been of high quality - notably the Supreme Court building completed in 1993. The steady work of the Jerusalem Foundation, established by Mayor Kolleck to provide funding from the Jewish Diaspora for improvements to the city certainly helped to create parks and open spaces, facilities for young people and educational facilities (most, but not all, of them in the Western half of the city).

An Israeli representative at UNESCO speaking in the early 1980s was able to justly refer to the new discoveries made by Israeli archaeological teams during the period between 1967-1980 and to take steps to preserve ancient buildings belonging to a variety of denominations in the Old City.¹⁵

Jewish orthodox in the city were particularly advantaged by the unification of the city since not only did they have access to the Western Wall but also they were given the opportunity to develop new quarters of their own and to move into the reconstructed Jewish quarter in the Old City.
However in spite of the new life given to the city - its new parks, the construction of some fine new buildings, the restoration of Jewish quarter, the preservation of old buildings within the walled city, the establishment of industrial zones (not an unmixed blessing), and the steady growth of the standard of living of the inhabitants of the city, there were also apparent from the early seventies onwards negative factors which served to make the city less attractive and which have become increasingly in evidence as time passed.

5. The negative aspects of development since 1967

Damage was done to the visual appearance of the city by the construction of a number of high rise buildings which sprang up after the unification of the city in 1967. The process of high rise building was finally checked by Mayor Kolleck after the grandiose Omaria scheme which envisaged a whole series of such buildings in Talbieh, a residential quarter in the central area, had attracted extensive public criticism. But the high buildings already built significantly altered the skyline for the worse. Nor was the successful protest any guarantee that such building will be permanently prohibited. Currently (in 1996) the Municipality is proposing to allow the construction of a whole series of twenty storey buildings in central areas of the city - while the motivation for this is primarily economic (the city greatly needs the income from taxes such buildings provide) the revival of this approach also indicates a continued obsession with monumental building and of a the wish to demonstrate that the city is making ‘progress’ irrespective of environmental and historical considerations.

Also detrimental to the environment of Jerusalem was the fact that the Israeli authorities were determined to see that the Jewish population of the city increased as rapidly as possible and that Israel control of the whole city was reflected in the location of new suburbs. Security and political issues were of paramount importance to the planners. Kronyaker comments: ‘Since Jerusalem’s re-unification in 1967, the two rings of new residential neighbourhoods built around the city centre have created new ‘ramparts’ designed primarily as a political barrier against any possible repartition.’

According to a report put out in by B’Tselem - a Jerusalem based human rights organisation - in 1995 ‘One central goal dictated municipal planning policy: strengthening Israeli control throughout the city. This has been undertaken by creating a demographic and geographic reality that will pre-empt every future effort to question Israeli sovereignty in East Jerusalem.’ The authors of the report go on to stress that examination of municipality documents and declarations of city policy planners make it clear that factors of this kind rather than normal planning considerations are paramount in the thinking of those responsible for the growth of Jerusalem. They point to the expropriation of lands privately owned by Palestinians and the manipulation of town planning regulations so as to postpone or prevent development by Palestinians while allowing it to Israelis, as the two principal means which are used to secure this aim.
This preoccupation with demography and security had, and continues to have to this day, a negative impact on the city and its environment. Not in the least because it prevented consideration of the alternative future which the city might have had - as an academic, administrative and cultural centre of modest proportions rather than a major metropolis.

From 1967 till today the rapid construction of massive suburbs - Ramat Eshkol, French Hill, Gilo, East Talpiot, Ramat Allon and Neve Ya'akov - has radically changed the city, creating both environmental and political problems. More such suburbs are currently being planned. A team working with the Jerusalem Town Planning Department wrote in 1985 such projects bring with them ‘a danger that they would have the long term effect of extensive urban sprawl in which the city of Jerusalem would lose much of its identity’. 18 It seems likely that they were correct in their surmise.

The majority of the new suburbs have been built in East Jerusalem on land that before 1967 belonged to Palestinians and which is beyond the so-called ‘green line’ - the old Jordanian/Israeli border. While they are certainly of better construction than the immigrant housing of the earlier period, the perceived need to build in haste, coupled with insensitivity to the landscape, have tended to make them visually unsatisfactory. Looking at the recently constructed suburb of Gilo or the buildings in Maale Adumim (not strictly speaking a part of Jerusalem but so near to it as that it is thought of as part of the urban complex of the city) it is difficult to avoid the feeling that the architects have been driven by a sense of the need to overawe their Palestinian neighbours. Such buildings, according to Kroyanker, ‘constituted a powerful visual emphasis of the statement: we're here for good’. 19

Though some individual housing units are of good quality, the total effect is one of monumental, heavy and essentially unfriendly architecture. As David Amiram writes ‘the amount of building in each of the outlying neighbourhoods and their establishment as public housing projects, brought about creation of sub-cities with almost uniform construction. Thus, there is a marked architectural difference between these neighbourhoods, whose massive construction is reminiscent of development towns, and the individual characteristics of the regular neighbourhoods of Jerusalem’. 20 There is little doubt which type of suburb offers the more attractive and liveable environment.

The new suburbs have created severe problems in terms of transport and employment as Peter Oblander, an urban planner from Canada, commented when considering the first four such suburbs that were to be completed: ‘These four outer suburbs neither provide their own job opportunities, nor are they functionally linked effectively to where the residents, both present and future ones, are likely to find gainful employment. And this is a very critical omission of strategy’. 21

The implications of this for those travelling round Jerusalem can be seen in the ever more crowded roads - journeys which at rush hour took half an hour in 1986 take an hour and fifty minutes ten years later.

Such suburbs have been constructed to a large extent without proper centres of their own (though Kroyanker claims that new suburbs built in the late eighties
between Neve Yakov and French Hill have places of employment and are not simply ‘bedroom’ suburbs. The majority of residents in these suburbs have to travel in and out of the city for shopping, work or entertainment.

In part at least these problems have resulted from the fact that the sites were chosen for political-strategic reasons, not in terms of the best location from the point of view of the convenience of their inhabitants. From a Palestinian point of view it certainly seems that way. As Ghada Talham comments ‘Ramot in the Northwest was built on high ground commanding a number of Arab villages such as Beit Hanina and Nebi Samuel. The Gilo housing development dominated Beit Safafa and overlooked Beit Jala and sections of Bethlehem. Neve Yakov overlooked the Arab villages of Abu Dis, Sur Bahir’ and so on.\(^\text{22}\)

The wish to obtain demographic dominance has also been a material factor in causing the Governments of Israel (whatever their political complexion) to encourage more settlement in Jerusalem without paying regard to the fact that employment prospects in the city are limited. Because of the relatively low incomes enjoyed by most of the inhabitants of the city, the income of the Jerusalem municipal authorities is small compared to their commitments (at present the income of Jerusalemites \textit{per capita} is lower than that of the inhabitants of over 20 other cities in Israel - in part because orthodox Jewish communities and Palestinians generally have small incomes).

The poor financial position of the municipality prevents the authorities coming to terms with the problem of infrastructure. For example, at present only about 25\% of the sewage of West Jerusalem is properly treated and the remainder still pours into Wadis in its raw state, while on the Eastern side almost all sewage in untreated, though eventually work has begun to improve things in the west of the city. Jerusalem provides its citizens with average or less than average municipal services in fields such as waste disposal or school provision (by contrast adult education in West Jerusalem is catered for in a very positive manner by community centres financed and supported in large measure by the Jerusalem Foundation). Energy has gone into thinking about building rather than about the life of the city as a whole.


In spite of the negative factors set out above, Jewish inhabitants of Jerusalem have for the last thirty years enjoyed the benefit of better quality accommodation and improved amenities as well as a sense that the city is theirs to rule. Those groups who are not especially environmentally aware, and these include most of the orthodox Jewish religious inhabitants, feel well satisfied with things as they are.

The long term damage to the well being of city has not yet become fully apparent. Traffic levels are only now building up to the extent that they are a real problem for all the citizens not only greatly lengthening travel times within the city but also threatening the health of the people through toxic emissions. The destruction of the peripheral areas of the city and with it much of the special quality of Jerusalem, is taking place gradually its impact has not been fully felt.
7. The city from a Palestinian perspective - 1967-1996

Whatever advantages the Israeli Jewish population may have derived from the period of Israeli rule over the whole city it is clear that the Palestinian inhabitants have had no such sense of well being.

It is true that their standard of living has risen since 1967 - though no accurate figures are available - and that they can benefit from job opportunities in Israel. However, since 1967 the Palestinian occupied section of the city has been essentially stagnant and existing infrastructure has been neglected. A recent survey indicated that in the Old City 20 per cent of houses are unfit for habitation. 23

There has been development in the East of the city but, as has been pointed out above, almost all of it has consisted of building of new suburbs for Israelis. The location of the suburbs such as Gilo and Pisgat Zev has not been undertaken on normal planning grounds but for reasons set out in a Jerusalem municipality paper of 1968: 'Every area of the city that is not settled by Jews is in danger of being detached from Israel and transferred to Arab control. Therefore the administrative principal regarding this area of the city's municipal jurisdiction must be translated into practice by building in all parts of that area, and, to begin with, in its remotest sections.' 24

The Jewish population in East Jerusalem now equals the Arab and ownership of most of the open land there has effectively been taken over by the Israeli authorities. Sara Kaminkker, a former city planner, claims that in 1967 Palestinians owned 90 per cent of the land of East Jerusalem but that today they have control of only 13 per cent.

Over the last thirty years development in East Jerusalem has been very limited indeed. The Israeli authorities have issued licences to build very sparingly and very reluctantly. According to the B'Tselem report already quoted, only 8,890 housing units have been built in the Palestinian sectors while 64,870 have been built for Israelis since 1967. 25 In 1993 only 5 per cent of building was for Palestinians though they constitute 33 per cent of the city's population. The result has been great overcrowding, which has destroyed the living environment of many individual Palestinians. The average housing density in the Palestinian areas of Jerusalem in 1993 was twice that in the Jewish areas. 26

The quality of services in East Jerusalem has also been much poorer than those in the West. For example, the village of Jabel al Mukkaber to the South East of the city has over 15,000 inhabitants but has no central sewage disposal system, no post office, no health centre, minimal provision of facilities for children to play in, an underdeveloped and dangerous road system without any sidewalks. Jabel al Mukkabber is an overcrowded semi-urban slum. On the next hill is the large Jewish suburb of East Talpiot which has all the services missing in Jabel al Mukkaber. The contrast is glaring and does not simplify peaceful inter-ethnic relations. In general the neglect of infrastructure has lead to the Arab occupied sectors of the city looking shabby and run down.

According to Michael Dumper, 27 services in those sections of the Old City occupied by Palestinians are much inferior to those in the Jewish quarter. Dumper
produces evidence of a deliberate policy on the part of the Israeli authorities designed to make the Old City unattractive to Palestinians, while exploiting for legal loopholes in existing tenancy regulations so as to enable Jews to acquire property previously lived in by Arabs. If he is correct and this policy is still in force (and certainly the Moslem quarter does look neglected) then its environmental impact on the Old City must be adverse. However, the question of how far this policy is deliberate was certainly not completely clear in the period when Kolleck was mayor of Jerusalem. Even Dumper admits that Kolleck made strong efforts to resist take-over by Jews of property in the Moslem quarter.

Paradoxically the fact that the Palestinians have not been able to build has preserved some attractive features of the city. Looking out over Silwan from the city wall the view is still relatively rural, the villages fit easily into the landscape of brown hills and it is possible to sense something of the romance of Jerusalem, city among the mountains, which is almost vanished from the Western side. In this respect at least the Eastern half of the city is for tourists seeking the special quality of Jerusalem more attractive than the Western. There is an opportunity for Palestinians, should they ever gain a voice over the future planning of the city, to make their section more attractive environmentally than the Israeli quarters.

But it is small wonder that the Palestinians do not see it that way. They are set on maintaining, or improving their demographic position. Currently they make up 28 per cent of the population of the city. This position has been maintained since 1967 - their number in Jerusalem has increased substantially since 1967 from 73,000 in 1967 to 165,000 in 1995, an increase which proportionally almost exactly paralleled the increase on the Jewish Israeli side. The impact of natural increase and of movement of Palestinians into Jerusalem from nearby towns such as Hebron have been responsible for this.

The Palestinians are almost certainly anxious to reflect their political aim of equality with the Jews through bricks and mortar. Though there are no authoritative Palestinian authored plans for East Jerusalem there seems little doubt that if the Palestinians achieve their objective and obtain half the city to develop, they will build large suburbs, offices for their capital and other public buildings which will ensure that the Eastern half of the city is not less urbanised and crowded than the Western. ‘The Palestinian Authority is in the process of designing a master plan for the construction of three new housing developments. The plan is political in nature, designed to encircle Jewish housing developments built in areas of the city captured during the Six Day war’ said a report in ‘the Jerusalem Post’ in 1995. The Palestinians will wish to make their hold on the East of the city firm and irreversible, just as Israel is currently seeking to do over the city as a whole. The impact of such an approach on the environment and quality of life in the city is not likely to be positive.

9. Planning for the future?

An aspect of the struggle for the demographic and physical control of Jerusalem is that it has lead to the lack of any over-all plan for the city. Writing in 1995, Sarah
Kaminker comments ‘an overall plan for the entire area of Jerusalem does not exist. Neither a planning map nor a written statement is available to tell the curious inquirer how the sovereign planning authority tends to develop in East Jerusalem.’

Kaminker makes a strong case in demonstrating how the villages round Jerusalem were deprived by the use of the planning process from building on village lands. Their plans were held up on the grounds that planning had not been completed. The result was a spate of illegal building, demolition by the municipal authorities, and subsequent ill-feeling.

Small wonder that Palestinians feel ‘that without sovereignty and political control over East Jerusalem they will continue to be unable to shape their society through planning economic development or to preserve East Jerusalem's Arab identity’.

Plans exist for West Jerusalem which in theory do much to protect the open spaces round the city and limit development to what is acceptable in terms of traffic flows and services. However they appear to be subject to change in accordance with the needs of the moment. It has, for example, been an axiom of planning in the city since 1967 that building will be confined to the hilltops while the valleys are left undeveloped. This principle, which has meant that certain areas remained open, is now being challenged with plans to develop the major valley at the Western entrance of the city near the village of Lifta. In the West of the city areas, long conceived of as being ‘green’ such as Ein Kerem and Beit Zeit, are now under siege from public authorities and developers anxious to build in attractive areas. They remain apparently oblivious of the fact that to do so will render these areas unattractive.

Now, as has already been remarked, new high rise buildings are planned for the centre of the city, most of them in areas where traffic densities are already high. Altogether, traffic problems are being tackled piecemeal and without, it seems, much concern for the long term or evidence from Europe and elsewhere that to build new roads simply encourages more traffic and is bound in the end to be an unviable solution to the problems of growing cities such as Jerusalem. Plans for alternative systems of public transport are at a very early stage of development.

It is true that problems such as this would have hit the growing city (assuming it grew in size as have most cities in the world) irrespective of its political ambiguities but the latter have certainly made them worse. As long ago as 1981 Professor David Amiram pointed out that outer suburbs of the city 'created considerable traffic load between these quarters and the city centre, as well as some cross - town traffic. When occupancy of these suburbs is completed ,the traffic load will increase, further adding to the existing congestion in the centre of the town.' A comment which has certainly proved correct.

Nor is it only transport facilities with Jerusalem which are being overtaxed by new developments. Michael Dumper claims that ‘the contamination of water sources, the degradation of the environment, and possible long term ecological damage is occurring as a result of an ideological commitment to expanding Jewish population rapidly.’

There is one striking instance of proposed new development which is clearly motivated by political interest and is just as clearly detrimental to Jerusalem's long-term well-being. The plan to build a new Jewish suburb at Har Homa to the south-east of the city just off the road from Jerusalem to Bethlehem, is clearly environmentally negative. It will effectively destroy the open area between Jerusalem and Bethlehem and lead to the establishment of a continuous built-up area between the two. Less significant in the long term but still very regrettable in the short term, it will destroy a well developed and attractive pine forest. As Father Thomas Stransky, Rector of Tantur college, which overlooks Har Homa, writes: 'from my study window I gaze towards a unique hills to the east, a sugar-loaf which stands by itself, surrounded north and south, east and west, by untouched wadi and ancient terraces of cultivated olive and fruit trees. I call it Jerusalem's Mount Tabor.' Father Stransky goes on to express the hope that one day it will form part of a hi-national public park 'where Palestinians and Israelis can relax, along or with friends and families, in quiet peace on shared land.'

Leaving on one side the fact that the proposed new suburb is built for the most part on Palestinian land and yet will offer no accommodation to Palestinians, the determination of the city authorities to proceed with the development clearly indicates a straightforward political motive- to surround the Arab sectors of the city with Jewish neighbourhoods so as to make even more difficult a political solution which envisages giving the Palestinians control over any part of the city. While the Labour Government delayed the issue of a permit for construction on Har Homa, it seems likely that the government of Benjamin Natanyahu will permit it and one more step will have been taken towards making of Jerusalem and its surrounds a major metropolis.

Plans such as this are the clearest evidence that the well being of the city, in environmental terms, as well as in terms of inter-ethnic peace, is subordinated to the overriding desire to keep the city unified under Israeli control and to 'create facts' which will make this irreversible. No better evidence could be adduced of the fact that nationalist circles in Israel have not abandoned their aim of creating realities which will make any repartition Jerusalem 'ridiculous' (something that according to Ian Lustig in his paper Jerusalem as a Political Fetish: A Hegemonic Analysis delivered at the Hebrew University in 1993, they have not yet succeeded in doing).

10. Can Jerusalem be saved

The special quality of Jerusalem as an environment owes much to its setting among the hills of Judea, much to its history and to the wonderful assemblage of buildings that have been built over the centuries by Christians, Jews and Moslems, much to the quality of stone and of light which is remarkable and stimulating, and much to the variety of ways of life of its inhabitants which give it a rare and unique atmosphere.

It is hard not to agree with Sari Nusseibeh when he writes that, while he feels bitter about the political plight of the Palestinians when faced with rapid Jewish
development in Jerusalem, the equally sad is ‘the ravishing of the hills, valleys and countryside of the city’. Looking today on Jerusalem's cement and mortar landscape, as indeed on its human landscape, it is hard not to feel saddened by the disappearance of that unique fusion of sunlight and earth texture in which the entire pastoral surroundings basked.35

In order to preserve the quality of life and character of the city a sophisticated and far-sighted way of thinking about it is a necessity. Some change there has to be and no one can simply have possibly fossilised the Old City and kept things as they were in the 1940s. But is clear that the struggle for political control through control of land and demographic advantage, has been damaging to the quality of life in the city and to its appeal to those visiting the city. It has distracted minds from consideration of what it is actually like to live in or visit the city, and what is needed to make it a special place to live in.

Community relations in the city have been another area which has suffered. Of course, the Palestinian Intifada created its own tensions (and to this day most of the inhabitants of West Jerusalem will not visit the Palestinian quarters) but rapid development on the Israeli side of the city and neglect on the Palestinian would have created a dangerous social gap between the two communities even without this violent confrontation. Social imbalance has, however, served to augment already existing tension between the two communities fuelled by wider political developments.

A significant negative factor has been the absence of a city plan which will ensure the well being of both communities besides guaranteeing the integrity of the open spaces in the city, dealing effectively with the problems of moving about the city, and provide unified services to all its inhabitants. The authorities who control cities like Jerusalem, which are unique, have a duty not merely to their political superiors or to a specific ideology but to the people of the city, of whatever ethnic group, and to the mass of those who visit the city as pilgrims or travellers. They manage a city which is part of the heritage of the world.

By such criteria today's situation is a troublesome. Jerusalem is still an attractive city to live in. Sections of it have a rare and special quality, but current plans for continuing development and insufficient attention to social justice and aesthetic values do not augur well for its future. It is also worth noting that one side effect of the way in which the planning and environmental future of the city has been adversely effected by political conflict, has been that it has limited the amount of public participation in decision making - on the Palestinian side there has been virtually none. On the Israeli side there was a strong environmental movement in the 1970s and early 1980s when effective campaigns were waged against some of the grandiose plans which were floated by developers anxious to make money from destroying the environment. However latterly the election of a right wing Mayor and the growing power of religious and nationalist groups in the city seems to have lead to a paralleled decline in the strength and vitality of the environmental lobby in the city.

Jerusalem today is larger than it was but not more pleasant to live in. If there is no change of heart it will become part of a large conurbation such as that already in
existence on Israel's coastal plain between Natanya and Rehovot, something which a rational appraisal of the situation would probably reject out of hand.

Writing in 1973 Arthur Kucher pointed out that Jerusalem was at cross roads. The possible choices he defined as follows: 'the one is a city manipulated to achieve certain political and economic ends, the other is the city as an affirmation of human values, and the promise of a spiritual reality'. The last 25 years have seen this choice made and the worst fears, which he expressed, justified.

Jerusalem can only be truly a special city when decisions about its future are taken with the needs of all of its inhabitants in mind, and when these plans are made on environmental grounds, in terms of the quality of life of its people, not political ones. The future of the city as a place to live in, looks doubtful - political pressures, which have been the focus of this article are, combined with commercial ones, threatening both the quality of life of the citizens and the future of Jerusalem as one of the great cities of world.

Conclusion

It is still not too late to save the city, but to do so will require a major rethinking on the part of all those who are entitled to have a say in its future, Israeli and Palestinian alike.

Such a rethinking should include:

1) Looking again at the question of how much Jerusalem should grow. While Jerusalem, whether one likes it or not, is now a metropolis with over 600,000 people. It is still possible to limit growth and to avoid the model of Tel Aviv or Los Angeles.

2) Developing a master plan acceptable to all communities in the city and to the representatives of different religions whose holy places lie within the city limits.

3) Renewing efforts to involve the public, both Jewish and Palestinian, in the process of planning the city.

4) Making a special effort to ensure the preservation of the remaining open spaces in both East and West Jerusalem and the visual/spatial impact of the city skyline.

5) Creating new bodies in which Israelis and Palestinians who care for the city can think together about its future as a place to live in and the quality of their lives.

6) Ensuring that new building is designed to fit into to the landscape and use the minimum of land.

Such suggestions have more than a touch of unreality about them at the present time, but if the deathly touch of political conflict, combined with lack of creative thinking about the future of the city on the part of those in authority over it, is not to be fatal to Jerusalem, they should be given a chance.

The well known Israeli poet Yehuda Amihai has a poem which provides an eloquent commentary on much of what has happened to Jerusalem in the last fifty years:
Mayor

It's sad
To be Mayor of Jerusalem.
It is terrible.
How can any man be the mayor of a city like that?

What can he do with her?
He will build, and build, and build.

And at night
The stones of the hills around will tumble down
Towards the stone houses,
Like wolves coming
To howl at the dogs
that have become men's slaves.

(Translated from the Hebrew by Assia Guttman from Selected Poems. Cape Collard. 1968.)

Notes

This article is based in part on the author's own experience as an official of the British Council working in Israel (from 1958 to 1962 and again from 1968 to 1974) and on conflict-resolution at the Davis Institute for International Relations at the Hebrew University, Jerusalem, from 1993 to 1996.


2 Storrs, R. 1943. Orientations.

3 The ordinance requiring that no structure may be erected in Jerusalem using metal or plaster was issued by Sir Ronald Storrs shortly after the British took the city from the Turks in 1917. David Kronyaker writes 'More than any other law or regulation laid down in Jerusalem in the past seventy five years, Storrs's historic ordinance mandated stone-built architecture, thereby determining the face of the city.' See: Steimatski. 1995. Jerusalem Architecture.

4 Marlowe, J. 1946. 'Rebellion in Palestine', Cresset Press: 104 - 110. Marlowe is the pen name of a former British mandatory official who writes, after discussing the general question of Mandatory finance: 'the achievements of the Government in social service and public works must seen in the light of the limited funds available'.


7 Agharzarian, A. 1993. 'Growing up in Jerusalem', in Middle East Report. May: 13-18. He paints a somewhat different picture. He claims that shopkeepers in East Jerusalem could make a lot of
money from tourists and that the schools in the city attracted Arab students from all over the Middle East. He writes 'whatever happened Jerusalemites thought they were the center of the world'.

13 Kucher, A. 1973: 54. ‘Unity was to be imposed contrary to the city’s functional capacity and at the expense of many aesthetic and environmental qualities’.
16 Kroyanker, D. 1985: 82.
21 Oblender, P. ‘the Outer Suburbs. A strategy or pragmatic realism’, in Jerusalem's Business Centre and Outer Suburbs: 54.
23 Khader, N.R. 1996. Socio-Economic and Health Profile of the Palestinian Arab Inhabitants of the Old City of Jerusalem. Society for Austria-Arab Relations: vi.
27 Dumper, M. 1993: 78-95.
THE DISAPPEARANCE OF BELGIAN ICONOGRAPHY
AND ITS CONSEQUENCES

Joël Kotek (ULB)

Introduction: The reality of Belgian iconography and the Belgian Nation/State

In 1951 the geographer Jean Gottmann invented the concept of "iconography": the phenomenon of political compartmentalisation of geographical spaces. This marked the beginning of Gottmann's reflection on political geography. Two concepts can be used to illustrate this: "circulation" and "iconography". In Gottman's analysis, these two factors are at the root of all changes to the political map of the world.

"Circulation" is relatively easy to define because it causes displacement: 'In the political order it causes displacement of men, armies and ideas; in the economic order it caused displacement of merchandise, techniques, capital and markets; in the cultural order, it causes displacement of ideas and inspires men'.

Circulation in this sense, however, is limited by the second force, that of iconography, which resists circulation, through the 'self-defence' instinct displayed by communities threatened by change. "Iconography" is the sum of beliefs, symbols, images and ideas, which a community inherits and to which its members become attached. The link between people and their 'icons' forges unity within any given group, and leads to the defining of a territory. Other communities, attached to other systems of iconography, are naturally excluded from the group.

Iconography leads to partitioning, first in the mind and then within territories. Partitioning, therefore, is an element of man's order. Different factors may contribute to the evolution of iconography: history, language, religion, social order, myth. The impact of iconography is less in the symbols themselves than in the way they forge the relationship between people and the geographical environment in which they live. Iconography is not related to concepts of determinism. Different communities can be founded around very different iconographic elements. A shared iconography does not require shared language, religion or history. An iconographic force is not determined by its content but by its political impact. An iconographic system does not simply correspond to a geographical area. It is deeply rooted in space and time and can, therefore, limit or oppose the effects of circulation.

An iconographic system is never fixed or permanent. It can change because it depends rather on human sentiment than on the rational mind. This is what distinguishes iconography from ideology. A complex iconographic system can, then, explode, or completely disappear. Indeed, this would appear to be the case in Belgium, where the 'Brussels problem' arises from the fact that the territory of the city is the subject of dispute between the country's once linked, but now rivalling, communities.
Working hypothesis: the Belgian entity, comprising Brussels, Wallonia and Flanders, is less artificial than many would have us believe today. A Belgian nation has existed. The existence of a system of Belgian iconography, at least in the past, bears witness to this.

The agglomeration of Belgian towns and villages, hemmed in by France, Germany and Great Britain, was built to last, and was based on an accepted common destiny. The inhabitants of these regions, whether from the Flanders, Brabant or Namur regions, traded together, wove the same cloth and built the same churches and belfries. There was a shared sense of pride and a shared observance of the feudal hierarchy led by the Prince. With the exception of the French conquest, the southern Low Countries were always governed by princes - sometimes foreign, but always legitimate. These socio-economic and political links gave rise to a typically Belgian iconographic system.

How else can the success of the national revolution of 1830 where Flemish, Walloons and 'Bruxellois' joined forces against the invading Dutch 'joug', be explained? The events in 1830 constituted a revolution of the Belgian people. Jean Stengers' underlines that the sense of national purpose was visible everywhere. Of those killed during the events on 1830, 12% were Walloons, 12% Flemish, and the rest from Brussels, which at the time was populated by a majority of Dutch-speakers.

The idea of a Belgian iconography or nation common to the Walloons and Flemish, who so fervently dispute control of Brussels today, is very different, say, to the Israelio-Palestinian conflict. In Jerusalem, the various protagonists in the conflict are clearly identifiable. Belgium, however, began with the creation of a Belgian nation, unified first against Dutch Calvinist forces, and later against French imperialism, because of an existing 'iconographic' reality.

The rise of nationalist forces have, though, begun to blur the iconography of Belgium. Symbols of Belgium have begun to be replaced by opposing - even antagonistic - iconographic systems. The question crucial to the future of Brussels is which of these opposing iconography's will prevail. Here we argue that if the disappearance of Belgian iconography is unavoidable, that of Brussels will continue to be defined by its status as a frontier-city, straddling the Latin and Germanic worlds.

1. The certainties of yesterday Belgium

1.1. Catholicism: the basic element of Belgian iconography

Belgian identity is revealed through its culture. The essence of Belgian's iconography is resolutely Catholic. If the country's political unity is partially due to the Dukes of Burgundy, its separateness from Holland results from the Counter-Reformation of the XVIith and XVIIth centuries.
1.2. The four elements of Belgian iconography

1.2.1. A language: French

It was quite by chance that the Belgian state, created in 1830 as the successor to the Burgundian Dukedom, retained French as its language of independence. In as much as language is not dictated by law, French was not imposed as the national language. It was, however, the obvious choice, in as much as French was the foremost language of science throughout Europe, including in the Low Countries. Studies by Flemish linguists of the Brussels and Flanders dialects of the 17th century show that Dutch had already ceased to exist as a language of culture. French was the language of mainstream and peripheral élites. In the secular world it was established as the language of human rights, and for Catholics it was the language of the Church’s ‘eldest daughter’ - France. André Miroir points out that linguistic boundaries were drawn between the social classes, and not between geographic regions. As such, the francophone élites were diametrically opposed to the illiterate working classes, who spoke a range of local dialects. In Flemish towns this was also evident: townspeople spoke French, while the surrounding rural areas had their own provincial dialects. This is important as it illustrates that the linguistic divide in Belgium was originally reflected in an urban-rural divide. Thus, the Dutch language was forgotten, but not repudiated. It must, however, be acknowledged that it suited the Flemish élite to be French-speaking. The Flemings had traditionally been in a minority on account of their language, and recognised this. Most well-known Belgian writers have written in French - despite being Flemish. Two names dominate Belgian literature: Emile Verhaeren and Maurice Maeterlinck, who won Belgium’s only Nobel Prize for literature. The Flemish political élite has also traditionally spoken French, to the great displeasure of the Walloons.

1.2.2. A common history based on Flemish history

If Dutch-‘Flemish’ dialects suffered from the dominance of French, the same cannot be said for the Flemish culture (we dissociate here between culture and language). To counter French expansionism and the tyrannical image of Napoleon III, the nascent Belgium relied heavily on Flemish history and symbolism. As argued by the historian Hervé Hasquin, the best way to mark and consolidate Belgian specificity, was to place the emphasis on Flanders. The historian Henri Pirenne identifies the County of Flanders and to a degree the Duchy of Brabant) as the birthplace of the Belgian nation. The Walloon principalities were traditionally sparsely populated and little urbanised. Liège had belonged neither to the Burgundian states nor to the Habsburg empire. The famous ‘battle of the golden swords’ of 1302 was presented as a victory of the ‘Belgian’ bourgeois and proletariat over the French nobility. It also showed the ability of the Flemish and Walloon (the Namur region was allied with the Flemish) to face the foreign invader. The glorious past of the Southern Low Countries is often associated with Flemish art, though never with that of Belgium. This has even led to a ‘flamandisation’ of certain painters, who were born in Wallonia,
but assimilated into Flemish art. One example is Roger de la Pasture, better known today as Roger Van der Weyden.

A series of characteristics and aptitudes have even been attributed to the Belgians for reasons of historical expediency. Thus, the Germanic trait of autonomy is said to originate with Belgians struggling against 'Latin despots'. More ridiculous still, a tapestry of so-called famous 'Belgians' has been woven, from D'Ambiorix (the Belgian Vercingétorix) to Albert I, not to mention Godefroy de Bouillon, Charles le Téméraire ('Reckless Charles'), Jacques Van Artevelde and Charles Quint. This cast of characters bears little resemblance to the real historical origins of Belgium. Had not the Burgundy Dukedom, which was the pre-cursor to the Belgian state, achieved more than the Kingdom of France from the industrial, commercial and administrative perspectives?

1.2.3. A nationalised monarchy

The first Belgian monarch, crowned King of Belgium in June 1831, led the state's external policies for thirty-four years. As a constitutional monarch, he was much respected, in particular for his successes in uniting Catholics and liberals in the ministerial cabinets. His ultimate political failure did not prevent him from laying the ground for a Belgian dynasty, which was subsequently reinforced by Leopold II and Albert I.

1.2.4. A capital: Brussels, melting-pot city

Brussels has always been the melting-pot of Belgium. It provided the fledging Belgian nation state with a meeting point for the country's diverse constituent parts, and in particular a means of uniting the opposing Latin and Germanic worlds. This role was, by its nature, temporary. Today's Brussels remains, nevertheless, the political and administrative capital of Belgium, as well as the centre of private banking and business. As with Paris and London, Brussels was a concrete symbol of the nation. This melting-pot city was also the centre of the cultural, architectural and scientific prowess associated with the fin de siècle. The Art Nouveau movement flourished in Brussels - Horta, Van de Velde and Hankar de Flameries were its pioneers. However, despite its original role as meeting point or melting pot for cultures and movements, Brussels the city was bound, gradually, to develop its own intrinsic identity. A consequence of the development of this identity was the erosion of the Flemish language in the capital. This was one of the early symptoms of the failure of the Belgian state and the dissolution of its iconography.

2. The uncertainties and divisions of Belgium today

2.1. From Flemish Movement to Flemish Belgium

The first cracks in the structure holding the Belgian state together began to appear at the beginning of this century. A sense of Belgian patriotism did endure,
however, in the early decades of the century, as seen during the first World War. The
Belgian monarchy also remained a strong symbol of nationhood. In this period,
Belgium was developing into a French-speaking, bourgeois state, enjoying a central
geographic role within Europe, but fast forgetting its Dutch-speaking majority.

It was not long before the Flemish majority made its opposition to these
tendencies strongly felt. The Flemish élite was not prepared to answer to a state
structure which was alienating its linguistic majority. In several respects, it could be
said that the history of the Belgian state can be resumed as one of legitimate struggle
of the Flemish people, resulting in today’s federal structure Flemish element is
dominant. The respect for democracy, inherent in the Belgian people, has spared
Belgium the fate of Slovakia: the Flemish have not sought full independence to
vindicate their geographical, cultural, economic and political identity.

Belgian federalism mirrors the territorial federalism of the country’s history and
geography. Belgian laws favour the rights of residence (ius loci) over the rights of
individuals (ius personae).
- Flanders has succeeded in putting a stop to the ‘frenchification’ of its territory. It has
also brought about the reduction of the Brussels-Capital region to 19 municipalities.
- Culturally, Flemish nationalism has been pushed to its limits. This culminated in 1968
with the negotiated expulsion of the French section of the Catholic University of
Leuven.
- Politically, the Belgian situation could be said to resemble that of the Lebanon.
Despite the official linguistic neutrality of the Prime Minister and senior Cabinet
Ministers, there is a clear tendency towards Flemish supremacy in these institutions.
Since the Leburton Government of 1974, no Government has been presided over by a
francophone. Key ministerial posts also go to Flanders, i.e. Foreign Affairs, the
Interior, Justice and Development. Even Belgium’s European Commissioner is
Flemish.
- Economically, Flanders dominates the Belgian landscape. The days when Wallonia
was the world’s third economic power are long gone.
- Lastly, Brussels has paid a high price for the creation of the autonomous Brussels
region. This gives disproportionate levels of protection and support to the Brussels
Flemish, who in any case have claimed Brussels as ‘the capital of Flanders’. The
Flemish Council and its executive body are located in Brussels, despite the fact that
the city is officially outside the territory of Flanders.

2.2. From Belgian iconography to Flemish iconography

Belgium is a fascinating example of the application of democratic processes, i.e.
peaceful, negotiated solutions which rely on (largely uncontested) changing
majorities. The key question affecting the continuance of the Belgian state today is
whether Flanders will choose to stay within Belgium or seek independence. The
tendency towards Flemish nationalism as well as the slow disappearance of Belgian
iconography all point towards the choice of independence. Both factors are examined
below.
2.2.1. *The Flemish paradox*

A strong sense of Flemish community has developed out of old resentments at being treated as a minority, despite numerical and economic supremacy. The battle to impose and maintain a Flemish cultural autonomy has been won. Although the Flemish élite is aware of this victory, it has not yet become embedded in the collective consciousness. A century of Flemish struggle has left many psychological scars - the old minority complex is still evident in the language and sentiment of most Flemish politicians.

2.2.2. *The irretrievable decline of Belgian Iconography*

The rise of the new Flemish élite has brought with it a new wave of Flemish iconography. This can only signal the death toll of Belgium’s iconographic symbols. The following factors demonstrate why this is so.

2.2.2.1. *History: fragmented*

A nation’s history determines its iconography. Yesterday, history united the Belgians; today it divides them. Three dates illustrate this past unity: 1302 (the battle of the Golden Spurs or ‘éperons d’or’); 1830 (the national revolution) and the Second World War.

1) In 1986 the Flemish Community Cultural Council proclaimed July 11 as the Flemish national day. Tollebeek states that this constitutes a deliberate perversion of the original symbolism of the Battle of the Golden Spurs - instead of marking Belgian victory against the French oppressor, it’s date is now being used to celebrate Flemish unity. Conveniently, the Flemish are choosing to forget the equal (Flemish and Walloon) composition of the 1302 army and their common victory.

2) If 1830 represented a victory of the combined peoples of Belgium, as shown by Jean Stengers, some now find it convenient to forget this. Those at the forefront of the Walloon unity movement also exalt the role of Wallonia in the revolution, giving only secondary importance to the role of the Flemish. The notion that there was Flemish and Walloon unity in 1830 is progressively acquiring the status of a myth without basis in reality.

3) A distortion of the facts is also discernible in descriptions of the Second World War. Increasingly, a consensus seems to be emerging according to which Wallonia formed part of the Resistance, while the Flemish collaborated with the Nazis. The rather dubious Flemish support for the idea of an amnesty for war collaborators has not helped to dispel this erroneous rendition of the facts.

More generally, it can be observed that history is taught according to different beliefs on each side of the Belgian linguistic divide. Belgium has become the orphan of its own history. Belgian francophones increasingly favour a marriage of convenience with the French, though this was once inconceivable. In short, the traditional allegiances and points of reference of the Belgian nation are disappearing.
2.2.2.2. The monarchy: marginalised

A slow erosion of the popularity of the Belgian monarchy can be observed, both in Flanders and Wallonia. 32% of Belgians would be content without a monarchy, according to a survey published in La Lanterne on September 18 1996. This is a small but nevertheless significant republican minority. The present King's image is weak: he has little real authority and is as contradictory as the complex and divided country he represents. Today's Belgium, like today's King, is searching for balance, identity, and a new value system. It is unclear whether Albert II can resolve these issues.

2.2.2.3. The language: compartmentalised

The linguistic conflict in Belgium has grown steadily since the Second World War. In the 1930's the Parliament passed a series of laws imposing mono-lingualism on the country's regions, thereby ignoring the rights of the French-speaking community of Flanders. French, as the lingua franca, is disappearing. Today's young Flemish favour English over French. Likewise Walloon students are lazy about learning Flemish. English is more and more commonly as a language of inter-community communication, especially in Brussels.

2.2.2.4. The Nation: split into parts

Alain Dieckhoff observes that a dual civil society in Belgium is now the norm. In the 1960's, he observes, the logic of ethnicisation prevailed, and since then there has been a growing disunity between Flemish and Walloons, with linguistic borders definitively drawn and political parties entrenched on one or the other side. Dieckhoff also refers to the 'nationalisation' occurring in each camp.

There is no doubt that very different manifestations of the collective consciousness are now visible in the two communities. With the growing autonomy of each region, frontiers have become cultural as well as linguistic and, some would argue, the frontier now once again appears to divide the Latin and Germanic worlds. This re-inforces the north-south divide within the country, with one community turning towards the Anglo-Saxon world and the other towards the French. Wilfried Dewachter raises the question of what today's educational system will mean for the political classes of tomorrow. A tiny percentage in each community watch each others' television stations or read each others' newspapers. Mixed marriages are rarer and rarer. In short, the lowest common denominators of the Belgian state are harder and harder to identify.

2.2.2.5. Brussels: henceforth a frontier city

The fate of Brussels has been addressed ever since the first centrifugal forces affecting the centrality of the nation were observed. To understand the nature of Brussels and its problems, the Walloon and Flemish pretensions to the city must also be understood. Both Communities see Brussels as the centre of power, and in
particular there is a Flemish complex about the former Frenchification of Brussels which led to the French language being associated with centralised power in Belgium. However, those at the forefront of the Flemish Movement, who hope for the failure of Belgium as a country, cannot have failed to observe that Brussels has now, for better or for worse, acquired the status of a culturally mixed or ‘melting-pot’ city. It has nevertheless failed in its experiment to create a homogeneous Community where distinctions between Flemish and Walloon civil servants would be blurred. For all this, it is still the only part of Belgium where a semblance of Belgian identity, however weak, can be discerned. At the very least, therefore, Brussels remains the link between the two peoples, even if this is a link through confrontation. Either way it is and will remain a ‘frontier city’ with a rare and complex institutional system.

As a result of ever-rebounding fears, the Belgian situation is reminiscent of that of the former Yugoslavia. Both countries have been more ‘federative’ than federal, in short, made up of component parts which have co-existed in continual suspicion of each other. The Walloons and the inhabitants of Brussels have a minority complex, and often display fear and humiliation vis-à-vis the country’s other Communities. The minority syndrome is also well-known in the north of the country, but there it has resulted from deep historical wounds, which today’s economic and demographic superiority do little to compensate for. Walloon frustrations have their root in the economic decline of the region. The frustrations of the inhabitants of Brussels are over spatial concerns, and the absence of space to develop and prosper. In particular, Belgian francophones have formed the view that Flemish prosperity is being acquired on the back of the national structure, financed somehow by the south of the country. These frustrations, along with the hysterical pseudo-nationalistic sentiments being displayed on each side which are bringing about the gradual and continuous breakdown of the current federal structure.

3. Maintaining the kingdom of Belgium: from divorce to marriage of convenience

Is the Kingdom of Belgium as we know it coming to an end? If we trust the results of surveys and opinion-polls, the answer would appear to be no. In September 1996, two surveys clearly demonstrated continuing support for a unified Belgium. The first, for the popular Brussels newspaper ‘La Lanterne’ gave 65.7% of those questioned as against separation (but with 34.5% in favour in Flanders). In the second, for the Dutch-speaking weekly Humo, an even larger majority was shown to be in favour of the Belgian state; only 14% of those interviewed were in favour of separation, and the regional differential was small (17% in favour of separation in Flanders, as against 14% in Wallonia and only 8% in Brussels). However, we need only look to the example of Slovakia, where an ‘hysterical élite’ (as defined by the Hungarian historian Istvan Bibo), extracted independence against the will of the majority, and without recourse to a referendum, to see that history is not always made by the people, but often by the so-called ‘active minorities’.
To this reality, a very Belgian particularity must be added: with or without hysterical élites, the Communities in Belgium will continue to have different, if not opposing, iconographies - those of Belgium and Flanders. This indicates that Belgium can and will continue to exist 'by default', even without the unifying force of a common iconography. Our hypothesis, therefore, is that Brussels the 'frontier city' constitutes, paradoxically, the only chance of survival for the new Belgium.

3.1. Brussels: the last chance for Belgium?

We submit that the city of Brussels, far more than the monarchy or the national debt, is the element which will ensure there is a Belgian continuity. Judging by the importance of the role of Brussels in the dispute between the French and Dutch-speaking Communities in Brussels, it is clear that the Flemish élite could never conceive of an independent Flanders without Brussels as capital.

3.2. Brussels: an 'impossible' capital of Flanders

In the event that the region of Flanders is to declare itself to be an independent state, with Brussels as capital, the sovereignty of the new Flemish government would only extend to those functions and institutions currently occupied by the Vlaamse Raad, the executive body and civil servant of the current Flemish region. The municipal and communal instances of Brussels would hardly be disposed to accept an alien Flemish sovereignty extending to the territory of Brussels. In the absence of a unified Belgium, it is likely that the city of Brussels would separate from Flanders, either to link itself with Wallonia or to seek an internationally recognised autonomous status. In addition, it is likely that some of the peripheral municipalities of Brussels, currently part of Flanders for reasons of territorial expediency, would secede, while a large part of the Walloon section of the Brabant province would actually join its territory to that of the district of Brussels. These are the essential reasons which deter the Flemish from taking the decisive step of proclaiming their independence.

However, for political reasons (EU, NATO and its international status) as well as 'metapolitical' factors (in 1994 Christian Socialist MP Jan Verroken declared that 'Brussels is our Jerusalem'), the Flemish will not renounce Brussels. Brussels continues to be the centre of the Flemish re-conquering or 'flamandisation' movement. This has unfortunately led to forms of counter-hysteria in the Brussels francophone Community.

Despite the fact that the political wing of the Flemish Region invests heavily in Brussels as 'its' capital, from the political, economic and cultural perspectives, there are four main obstacles to any future re-conquering of Brussels by the region of Flanders: demographic: Brussels is one of the main francophone cities of the world (3.3.); psychological: the Flemish instinctively dislike Brussels (3.4.); democratic: the inhabitants of Brussels do not wish to be subsumed into a greater Flanders (3.5.); political: since 1996, there has been a tendency towards closer collaboration between Walloons and Brussels francophones (3.6).
3.3. Francophones constitute the majority in Brussels

How many francophones are there in Brussels? This seemingly straightforward question is the subject of passionate argument, and is not easy to answer directly. Until 1947, a linguistic census had been carried out every ten years in Belgium. The subsequent drawing of administrative boundaries around linguistic regions was carried out in accordance with the results of the census. The linguistic component of the ten-yearly census was finally abolished in 1962, after a boycott by 300 Flemish mayors. Since this blatant rejection of the linguistic census, opinions have changed continually on its benefits, and Flemish politicians carefully avoid taking clear positions on the issue. In 1992, when asked how many of the identity cards issued in the Brussels region were in French, Flemish Socialist Minister of the Interior, Louis Tobback, avoided providing a direct response to the Parliamentary Question by stating that 'no legal measure or regulation existed to enable the Interior Ministry to give out statistics which could constitute, either directly or indirectly, a linguistic census'. However, there are several other means of establishing the demographic realities of Brussels, including electoral results, civil acts, tax returns, television licences, to name but a few. Each of these tools shows that within the Brussels region, the large majority of inhabitants (i.e. 85%) are francophone. As such, in the European elections of June 1994, 83% of votes in the Brussels region were for francophone electoral lists. In the legislative (national) and regional elections of 21 June 1995, respectively 84% and 85% of votes were for francophone lists. Therefore, the Brussels region, as determined by its population, is largely francophone.

This is likely to remain the case, given the attachment of the inhabitants of Brussels to 'Frenchness' and the fact that the immigrant population also tends to speak French. The views of Belgian immigrants on the linguistic question are clear: 'it is already difficult enough for us to find work when we speak French; if we have to add Flemish what will it be then....?' The immigrant population, which seeks integration with the citizens of Belgium, is likely to re-inforce the francophone identity of Brussels. Overall, from the demographic perspective, the trend towards a francophone Brussels is well established and likely to be reinforced in the future.

3.4. Surveys confirm that the Flemish dislike Brussels

The majority of the Flemish population which commutes daily to work in Brussels, would never seek to live in the capital, and returns willingly to the Flemish provinces in the evening. The Flemish denounce Brussels for its dirtiness, for being unsafe and are highly critical of the fact that they have difficulty communicating in their mother tongue when they are in the city. The same surveys indicate that in the North of Belgium, few people feel any attachment to Brussels. This is borne out by the fact that French-speaking 'Bruxellois' constitute 23% of the Belgian French-speaking community, while Dutch-speaking 'Bruxellois' constitute only 4% of the total Dutch-speaking Community of Belgium.
The Flemish continue to view Brussels as being too French-leaning, too expensive, and too run-down. Compared with Gent, Bruges and Antwerp, Brussels no longer satisfies Flemish expectations of urban quality. The effect of this disillusionment with Brussels has been an attitude among the Flemish that if the francophone community is prepared to accept Brussels’ inadequacies, the Flemish population prefers to live on the periphery of Brussels, where it can shape its own living conditions and costs. It is unsurprising, therefore, that the francophone ‘phenomenon’ in Brussels is continuing to gain importance. In the May 1995 elections, the Flemish lost a seat on the Brussels Regional Council, bringing the total number of Flemish seats held to only 10 of 75. The number of Dutch-speaking communal councillors is also declining: since October 1995, the total has dropped to 6.3%. Since the mid-1980’s, the number of Flemish youth and cultural centres in the capital has diminished considerably, and there is a declining demand for Dutch-speaking secondary schools. This contrasts with a growth in demand for French-speaking pre-primary and primary schools. Finally, the Flemish presence is steadily growing in the periphery of Brussels, where rents are lower.

3.5. Surveys confirm that Brussels citizens do not want to be part of Flanders

Last September, the Field Research Institute demonstrated via a simple equation, the refusal of the inhabitants of Brussels to adhere to an independent Flanders, however economically prosperous. The third question asked in the survey was: if separatism prevails in Belgium, what will become of Brussels?” The five alternative responses were: (a) an independent region, (b) attachment to Wallonia, (c) attachment to Flanders, (d) attachment to a Wallonia annexed to France and (e) attachment to a Flanders annexed to the Netherlands.

35.5% of the Bruxellois interviewed, opted for the alternative of an independent region, and 29.1% opted for attachment to Wallonia. 15.5% opted for attachment to Flanders, a number which corresponds more or less exactly to the number of Dutch speakers in Brussels. In the Flanders region, only 33.8% of those interviewed expressed a wish to unify Brussels with Flanders, while 40.4% of Walloons favoured integration of Brussels with Wallonia. As to the question of what the Flemish and French Communities think of the integration of Brussels with the ‘other region’, only 3.3% of Walloons would accept integrating Brussels with Flanders, while 20.7% of Flemish citizens would accept that Brussels become part of Wallonia. On balance, however, the Flemish interviewed would prefer to see Brussels become an independent region. These figures throw light on two fundamental points: the first is that in Flanders, Brussels is cherished by the élite and despised by the masses; the other is that Brussels is increasingly seen as fitting with Wallonia. While the Walloons do not necessarily display a love for Brussels, they increasingly recognise its importance, and the inevitability of the fates of Wallonia and Brussels being intertwined.
3.6. The New Brussels/Wallonia Solidarity

It can be argued that at the present time in Belgium, we are witnessing a return to ‘anti-regionalism’. Members of the PRL-FDF have expounded this theory in a recent manifesto entitled ‘The Strength of a French-speaking Union’. A recent speech by Louis Michel also addresses this theme: ‘it would be a mistake to think that Brussels can make it alone, without Wallonia. Quite apart from the ethical difficulties this choice would pose, it would be political suicide. The Flemish are waiting for a move of this sort to step in and re-claim Brussels. In the North of Belgium, there are even those who believe they can take over our capital city without a fight...’ (La Wallonie 29.09.96). Under simultaneous pressure from the Flemish and the FDF/PRL Federation, the Socialist Party finally seems to have got the message. We can now observe shifts by the Walloon Socialists to attempt to include Brussels in their power base. This realisation of the ‘Brussels factor’, as shown in the examples below, is nevertheless revolutionary in Walloon culture.

Robert Collignon, the Minister-President of the Walloon Region has committed himself to protecting the integrity of the Brussels Region. The main French-speaking political families are now displaying optimism as to the future of Brussels. It was in this new spirit of Brussels-Wallonia solidarity that the members of the Brussels and Walloon governments met in Namur in November 1996. The invitation to this meeting by Wallonia had considerable symbolic value and, according to Hasquin, the Minister-President of the French-speaking Community, it represented a victory for the PRL-FDF Federation in the cause of a unified French-speaking territory.

On 23 November 1996, the newspaper *Le Soir* published a letter from Marcel Bolle de Bal, professor emeritus at the University of Brussels (ULB), which expressed the fears and hopes of many: ‘I am extremely concerned that around me pessimism abounds and grows with increasing strength: ‘no future for Belgium’, ‘the breaking up of the country’, ‘the Flemish want Brussels, so they shall have it’... This worries me to the depths of my convictions as a citizen, both social and sociological. In particular the sociological dimension calls for a reaction from the citizen.....all that fuels this tide of pessimism and makes it threatening, is a phenomenon familiar to sociologists: that of the ‘manipulated prediction’. The more we hear and read prophecies of the breaking-up of the country, the more our citizens, whether consciously or unconsciously, will adapt to the inevitability of this outcome. This is why I am sincerely happy to see the current movement towards closer relations between Brussels and Wallonia, which has culminated in this meeting between the two governments. It is acts of resistance of this kind which will save federal Belgium.’

Marc Uyttendaele expressed similar views in the newspaper *La Lanterne*: ‘a minority of Flemish will not be allowed to dictate to 85% of the citizens of Brussels....it is true that by nature the average Bruxellois is placid, but there are still limits to what we can accept.’ The French-speaking community of Belgium seems to have awoken to the sounds of this alarm. Nowadays, pro-Flemish manoeuvering is matched by pro-French activism. It is in this confrontational context that the popularity of Jacques Neyrinck’s recent best-seller, ‘The Siege of Brussels’ should be
understood. The ring of the motto of the French-speaking universities 'Choose the Future' is also notable. It implies that in the event of the implosion of Belgium as we know it, the reconstructed state would be entirely French-speaking.

Conclusion: a new Flemish Realism?

Brussels will never be the capital of an independent Flanders. With the exception of certain extremists (with both expansionist and fascist leanings) most Flemish politicians, from Ostend to Louvain, are now convinced of this. Even Bert Anciaux, in a recent interview with La Lanterne conceded that he was a 'confederalist'. At present, 'Brussels is the only factor which enables Belgium to maintain a federalist rather than a confederalist state. If Flanders becomes independent it will lose Brussels. Brussels suffers from its poor image in Flanders'. Belgium as an entity, however, will continue to exist for as long as the Flemish elite continues to covet Brussels.

Belgium strikes back?

Fundamentally, the survival of Belgium depends more on the country's frontier status that on the willingness of either community to accept the other: it is the meeting point for the Latin and Germanic worlds. The question of minorities and majorities (whether double minorities or double majorities) is increasingly irrelevant - if the Flemish constitute the majority at the national level, in Brussels there is a majority of French speakers.

The democratic forces within Flanders must understand that unless they are prepared to condone civil war and ethnic cleansing, Flemish independence must of necessity be without 'their' capital. No claim or principle should be allowed to stand in the way of the self-determination of Brussels, 85% of which is francophone.

Thus, the status of Brussels is the greatest obstacle to Flemish separatism.

Notes

1 Stengers, Jean. 1995. 'La révolution de 1830', in Morelli, Anne (ed.) Les grands mythes de l'histoire de Belgique, de Flandre et de Wallonie. Brussels, EVO Histoire: 139 [and. foll.].
- Annex: Seven scenarios for Brussels -

1. If Belgium breaks apart, four scenarios for Brussels are conceivable

1.1. Brussels, a homogeneous city (= Lille)

In the event that Flanders accepts the loss of Brussels, whether to independence, Wallonia or France, this secession would inevitably lead to the disappearance of Brussels’ Flemish minority. The current system, whereby collective rights are accorded to the 15% Flemish population of Brussels, would naturally be revised. Brussels could begin to resemble Lille: once Flemish, but today unified in and proud of its ‘Frenchness’. In this scenario, the loss of Brussels would make Flanders the heavy post-separatism loser.

1.2. Brussels, an independent city (= Washington)

Currently the preferred hypothesis of the French-speaking inhabitants of Brussels, the status of protectorate city or European district for Brussels would be likely to bring increased prosperity, but diminished autonomy for the city (c.f. Washington DC, as this city is subject to Federal administration in the US).

1.3. Brussels, a destroyed city (= Sarajevo or Vukovar)

In the event that Flanders refused to recognise the independence of Brussels, the scenario of a city under siege, or re-conquered at the price of bloodshed and ethnic cleansing, could be envisaged. In this hypothesis, only a ‘Pyrrhic victory’ could be claimed. In any outbreak of hostilities, Brussels would immediately lose the European institutions, thereby negating one of the main benefits of the desired Anschluss.

1.4. Brussels, a « frustrated » city (= Belfast)

One could also conceive of a situation where the citizens of Brussels would choose union with Flanders over and above independence or Wallonia, for reasons of economic expediency and prosperity (the ‘Munich solution’). This is the scenario dreamed of by the Flemish extremists. As such, the Vlaams Blok tries to entice the French-speaking community of Brussels with the promise of a new Flanders, free of the capital’s immigrant population. This hypothesis is the least probable, not only because of the new spirit of francophone co-operation described above, but also because of the over-riding desire for freedom of choice. It was this desire for freedom which propelled the Belgians to form a state in 1830, even without the economic security, which alliance with prosperous Holland would have brought. This demonstrates that money can be of secondary importance where the desire to preserve cultural identity is strong. Furthermore, the risk of terrorism, comparable to Belfast, seems to be unavoidable.
2. In the event that a unified Belgium is maintained, four hypotheses for Brussels can be envisaged, one of these catastrophic for its inhabitants

2.1. Brussels, a city under influence (Brussels as before 1989)

If Belgium were to become a looser Walloon-Flemish condominium, or some sort of European protectorate, Brussels would lose all claim to independence and become a city administered from the outside. The capital would be subject largely to Flemish dominance, in the event of a straightforward Wallonia-Flanders partnership; it should be noted that this is the preferred option of Flemish politicians, from the VU to the CVP (not to mention a faction within the Flemish Socialists, led by de Batselier.) This scenario is one of the most improbable, given the new-found solidarity between Brussels and Wallonia.

2.2. Brussels, an unchanging frontier city (=Montreal, Ottawa)

Given the current boundaries of the 19 municipalities of Brussels, it is difficult to envisage going beyond the current system of collective rights. In the scenario of an unchanging Brussels, there is no room for consideration of demands for Flemish deputy mayors in each of the municipalities, even those without a single remaining Flemish municipal councillor. This hypothesis resembles the Canadian situation in as much as it will lead, in the long-term, to a severely weakened Flemish (French in the Canadian case) minority. This will arise not only out of the demographics, but also as a result of the 'Capital of Europe' and immigrant factors. In the Dutch-speaking schools of Brussels, there is a growing trend for pupils to speak both Dutch and French. The latest statistics from the VGC (COCON) confirm the downward trend of single-language pupils, even among children from families where Dutch is the only language spoken. This is particularly noticeable in pre-primary schools, where statistics show that 23.6% of pupils speak Dutch, 28.7% are bilingual and 47.7% are French-speaking. The picture in Flemish secondary schools is equally bleak: since 1989, the number of pupils enrolled has continued to decline. In 1993, the Flemish Minister for education, Ruffin Grip, outlined the various problems and some of the solutions to be envisaged, e.g. building schools on the periphery of Brussels, a slow phasing-out of certain schools and sections, conducting research in the problems of mobility raised by these trends, as well as the general problems raised by the ageing Flemish school structure. A further problem is the tendency for French-speaking pupils to change schools, once the bi-lingual primary phase has been completed. From this perspective, the fate of Brussels can be compared to that of Ottawa and Montreal, each of which faced complex minority situations (French on one hand and English on the other). Both cities have succeeded in remaining culturally rich and both have bi-lingual universities. If Brussels has a similar fate, it will at least be able to conserve its 'frontier' character.

2.3. Brussels, dynamic frontier city (Great Brussels)

A final, possibly utopic, hypothesis for Brussels can be examined, that of a 'Greater Brussels'. If Brussels were to be extended to include its hinterland, moving from 19 to 40
municipalities, a number of today's problems would automatically be resolved. Areas in the economic hinterland of the city, such as Zaventem where the airport is located, would properly form part of the capital. Politically, this solution could well satisfy Flemish claims to Brussels, as the Dutch-speaking minority would grow from 15% to 40%. It would also link Wallonia more neatly with Brussels by bringing the 120,000 French speakers on the periphery of Flanders back into Brussels. In this hypothesis of tripartite federalism, the future of Belgium appears more certain, and the character of Brussels as a frontier city is assured.

**Conclusion**

Thus, the status of Brussels seems to be the greatest obstacle to Flemish separatism. In the last two hypotheses, linked to maintaining Belgian unity, Brussels can recover its vocation until the 1960's, as a centre for dialogue between the two communities, regardless of the changing structural landscape of the state. The democratic forces within Flanders must understand that unless they are prepared to condone civil war and ethnic cleansing, Flemish independence must of necessity be without 'their' capital. No claim or principle should be allowed to stand in the way of the self-determination of Brussels, 85% of which is francophone.

Fundamentally, the survival of Belgium depends more on the country's frontier status that on the willingness of either community to accept the other: it is the meeting point for the Latin and Germanic worlds. The question of minorities and majorities (whether double minorities or double majorities) is increasingly irrelevant - if the Flemish constitute the majority at the national level, in Brussels there is a majority of French speakers.
THE POWER OF PLACE
- The struggle over territory and identity in Belgium -

Anja Detant (VUB)

Introduction

The scope of this paper is limited to the analysis of the role the concepts of territoriality and identity have played, and are still playing, in the struggle between both communities in Belgium. It tackles the question of the extent to which both elements have determined the evolution of community conflicts in our capital. We also want to indicate in which respect recent political developments in connection with territoriality and identity may have created mid and long-term opportunities to redefine the relationship between the two major communities in Brussels.

Before embarking on this issue, however, there are some general points to be considered. Whoever wants to understand political life in Brussels, cannot consider our capital as an isolated study case. Neither the institutional compromises in connection with the metropolitan area, nor political conflicts, nor the balance of power in Brussels, can be fully understood without taking into account the broader framework of the political context our capital was created in. The Brussels model reflects, albeit in a special way, a number of fundamental characteristics inherent in the Belgian political system. The tradition of trying to find compromises and the way in which major differences in our society have been institutionalised and controlled, are undoubtedly characteristic of Belgian politics in general and the Brussels institutional model more specifically.

However, we do not want to expatiate on political strategies and institutional modalities in Belgium or Brussels. We want to limit ourselves to referring to other contributions of the Brussels research team, which look into the peculiarities of the political landscape in Brussels and in Belgium.

Instead we want to elaborate on the interaction between a number of recent political, institutional and social developments in Belgium. Territoriality and identity play a key-role in this respect. Our starting point is the fact that institutional reforms in our country run parallel with a redefinition of society. The far-reaching federalisation which has been introduced, seems to strengthen the ties between territorial and 'group-loyalty'. Spurred on by nationalistic developments in Flanders and Wallonia, the understanding of political identity in Belgium is constantly undergoing change. 'Subnationalism' has taken over from ethno-linguistic elements which used to provide the basis for the political dividing line in Belgium. The territorial demarcation of the regions and politicisation of cultural elements on both sides of the linguistic border, are the basic ingredients that create a 'national build-up' in the regions. Whereas nationalism in Wallonia is growing gradually and in a less explicit manner, in Flanders it is more distinctly pronounced. While up to recently
community-oriented thinking dominated the line of thought in Flanders, a redefinition of political interests, in which national and territorial loyalty coincide more and more, is currently taking place. Within the geographical definition of the Region, 'Flanders' is increasingly being defined as a 'nation' by the political elite.

The nationalism of the regions will undoubtedly have repercussions on the political developments in the metropolitan area. We can distinguish among various causes for this development. First and foremost, the political constellation in Brussels is very sensitive to developments on a 'national' level. The fact that the balance of power in Brussels is inversely proportional to the national equilibrium, certainly is an important element here. Brussels is furthermore the border area 'par excellence' where both communities converge and co-exist. This coexistence was institutionalised in 1989 with the foundation of the Brussels Capital Region. As is the case in federal institutions, the political system in Brussels depends on the cooperation between both communities in the Brussels Regional institutions. Every development on a national level thus influences this co-existence of both communities on the level of the Brussels Region. Moreover, community contrasts which characterise political life in Belgium are crystallised in the metropolitan area. This means that both dimensions of the community struggle are closely intertwined, and that a solution for these contrasts will inevitably have to include the national and the local level. Language and territoriality also play a special role in the Brussels area. The functions of Brussels as a metropolis, the position of Brussels as a border area between Flanders and Wallonia and the heterogeneous composition of the Brussels population, are all determining factors. It is furthermore easy to predict that the sociological balance in the capital will also shift, which will in itself influence the political identification process.

Here, we want to shed light on these new developments, with a focus on the significance of regional nationalism for the metropolitan area and its Dutch-speaking minority. In Flanders and Wallonia the link between identity and territoriality is being strengthened with the gradual elaboration of a political process, oriented towards the area's own interests. At the same time, however, the position of the bilingual area of Brussels is more than ever a matter of discussion. It is exactly in this border area that the link between language and territoriality can be interpreted in different ways. The question concerning the definition of the area within the polarising scheme of community relationships is difficult to answer. Whether the institutional tissue that brings the French-speaking and the Dutch-speaking together within the borders of the Brussels Region and the system that links them to their fellow language users in Flanders and Wallonia, is still viable, is one of the questions that have to be answered. First, however, we will take a closer look at the role territoriality and language have played in the reform of Belgian political and social structures.
1. Territoriality and identity

The community divide has exerted a great influence on political life in Belgium. Belgium is known to be a divided, pluralistic society, characterised by the at times laborious co-existence of two communities which are often defined in ethno-linguistic terms. Both the public and the private domain have been fundamentally determined by the segmentation of the population in terms of language and culture. In various stages and through trial and error, possible solutions for the dissension between the Dutch-speaking and the French-speaking, or rather the disunity between the northern Flemish provinces and the southern Walloon provinces, have been put forward. In this situation language became one of the major factors of identification in the political system: it served as a key element in reaching the demarcation of two separate language communities, which were recognised as such.

Nevertheless, in our analysis we must take care not to picture these contrasts solely or predominantly as linguistic or cultural ones. The history of community relationships in Belgium is a lot more intricate than the contrasts between the two language communities. The interaction of a number of social, economic, political and ideological contradictions has been paramount in the evolution of relations between the Dutch-speaking and the French-speaking in this country. We can in fact safely state that 'language' was and still is the common denominator for more substantial conflicts about power and territory which were and are being settled. It is exactly the combination of all these different divides, intertwined with community contrasts, which have determined the structures of social and political life in Belgium.

1.1. Competitive logic

Where different language communities live together within the framework of one state, various possibilities exist to further their co-existence. An essential question in this respect is whether or not internal borders are called for.

From a historical point of view, it will become clear that political institutional developments in this country have been inspired by experiments with different societal models, ranging from protective language laws in a unitary state structure, through to the development of - linguistically speaking - largely homogeneous areas with a fixed language border, to a fully-fledged federalisation with the establishment of communities and regions. In all of these institutional experiments language and territoriality played an important role. Whereas in Flanders the demands for autonomy were primarily inspired by the concept of a language community, in Wallonia the demand for regional autonomy grew under the impulse of widely varying socio-economic interests. The history of community relationships in Belgium is thus characterised by the competition between entities defined as a group or as a territory.

The circumstances under which the territorial demands materialised are well-known. The 1830 unitary state served as a model for a relatively clear solution for the 'state-seeks-nation' problem. The French-speaking elite opted for French as the state language and fought for a complete Frenchification of the whole Belgian
territory, including Flanders. The French language in its opinion had to cement the whole nation together, and they went as far as presenting this as an absolute patriotic duty and necessity. In the constitution, however, language freedom was stipulated, so that the Flemings could go on using their language in private. Public life and official events were dominated entirely by the French language.

The low social cultural status of Dutch and the economic backwardness of Flanders, explain the position of powerlessness of the non-Frenchified majority of the Flemish population. Spurred by a process of political democratisation and helped by the fact that Flanders gradual made up for its economic leeway, a self-conscious group of Flemish intellectuals strove for recognition of the Dutch language and individual linguistic rights. When the Walloons appeared to resist the introduction of general bilingualism in Belgium, the focus of attention of the Flemish Movement shifted to the struggle for territorial language rights.

In between 1914 and 1935 various laws confirming the territorial principle, were passed. The consequences of the introduction of this territorial principle soon turned out to be of overriding importance for the ensuing course of conflictual events. In all public sectors language rights were now granted exclusively on territorial grounds. An explanation for the fact that the connection between language and territoriality could to a great extent be institutionalised, can be found in the strong ties the two major language communities, the French-speaking and Dutch-speaking, have with specific geographic areas. The language border, officially established for the first time in 1932, granted an official character to the existence of two territorially linked communities. This duality paved the way for the "bifurcation" of the existing structures, but at the same time generated a number of problems. Further on in this paper, we will elaborate on the role and significance of the "bifurcation". But it is a fact that Dutch-speaking and French-speaking federalists emphasised in a common manifesto issued in 1961 "de ne plus admettre que Bruxelles continue à se développer au détriment des peuples qui constituent la réalité belge [that Brussels no longer should develop, to the detriment of the peoples that make up the Belgian reality]." Flanders and Wallonia, and consequently the Flemish and Walloon people, had to be given the opportunity to develop as autonomously as possible.

The language laws which were revised in 1962/1963, put the emphasis on the principle of territoriality and once and for all fixed the language borders. For the future development towards federalisation, this was of great importance. Strict territorial demarcation is a basic asset for a federal system, for exactly these territorial criteria determine the extent of autonomy of each Region within the federation.

1.2. Opting for territoriality

We have already indicated above that two systems of competitive logic have played a role in the reform of the Belgian state structures. For a long time, the Flemish and the Walloons fundamentally disagreed on the question whether the stress was to be on the two-part nature of the communities or rather on the three-part nature of the regions. The Flemish set great store by autonomy in cultural, educational and
personal matters, whereas the Walloon aspirations centred on greater economic facilities for their territory. The Flemish aspirations for the Communities on the one hand and the Walloon option for the Regions on the other hand, both represented one of the two rival definitions for political identification, mobilisation and conflict, which would characterise the Belgian state reforms. The result of the struggle for power between the two outlooks was an amalgam of territorial arrangements and a system of guarantees for minorities in the so-called ‘facility-communes’ (communes that make allowances for language minorities) and peripheral municipalities.

In 1970 this struggle for autonomy led to a compromise with regard to the implementation of the decision to create Communities and Regions. The establishment of the Regions took up a long time, mainly because the problem of Brussels and the demarcation of the bilingual area appeared to be insoluble.

The reason why, particularly in and around the metropolitan area, linguistic tensions determined and continue to determine political life, is well-known. The Flemish presence in Brussels has drastically diminished under the influence of increasing Frenchification. As a symbol of the discrimination the Flemish suffered in a French-speaking, elite-dominated state, the metropolitan area soon occupied a central position on the Flemish political agenda. The struggle between communities in Belgium increasingly focused on the area of Brussels especially after the Second World War. This is true both of the more traditional language struggle and of the more recent discussion on the federalisation of the Belgian state system. On the Flemish side, particularly, the language situation in the metropolitan area was considered to be a serious obstacle to fully-fledged state federalisation. The Flemings in Brussels rejected the proposal to turn Brussels into a separate Region, first and foremost because they had to make sure they could count on the support of the political majority in Flanders. As the capital of the country, Brussels had to remain a place of meeting of both communities; the links between Flanders and Wallonia had to be preserved. They feared furthermore that the formation of a third, and predominantly French-speaking, region would shift the balance of power, to the detriment of Flanders. The French-speaking on the contrary, wished to extend regionalisation to the metropolitan area and to adapt the language borders to sociological reality. Blatantly contrasting arguments were put forward on both sides.

The Flemish, making historical claims on Brussels as a predominantly Dutch-speaking city in the old days, also insisted on the functions of Brussels as a capital. The French-speaking, on the contrary, emphasised the reality of the metropolitan society today. It seemed therefore reasonable to consider Brussels as a predominantly French-speaking city, given the fact that the largest community is the French-speaking one. As a result Flemish claims to a considerable part of the executive power were felt to be a curtailment of the natural predominance of the French speaking community. In addition, the Francophones opted for individual language freedom rather than for collective rights.

The history of Frenchification in and around Brussels and the fact that Brussels is entirely encapsulated in Flanders, provide an explanation for the question why the Dutch-speaking considered the demarcation of Brussels to be a breaking point and
why they kept insisting on protective measures for the Dutch-speaking minority in the capital.\textsuperscript{14} During subsequent stages of the federalisation process Brussels indeed turned out to be one of the major stumbling blocks.

While there is a clear territorial divide between Flanders and Wallonia, a similar territorial division in Brussels appeared not to be feasible. Inhabitants of both communities are spread all over the area and the Dutch-speaking constitute a minority, both regionally and locally. This had to be taken into account in negotiations on the status of Brussels. In search of an institutional solution, the central geographical position of Brussels and its relevance as a capital also had to be considered. No compromise was reached, however, and consequently the metropolitan area issues were put on institutional ice for years.\textsuperscript{15} In the mean time (since 1980) the formation of the Regions has been implemented for Flanders and Wallonia.

The first reforms have not been able to curb the struggle for greater autonomy on both sides of the language border. Widely varying socio-economic developments, the changes in the political balance of power in Flanders and Wallonia, and the idea that the Flemish and Walloon 'nation' respectively have to constitute the natural foundations for the political community, led to an increasingly insistent plea for a fundamental redefinition of Belgian state structures, along lines of territorial logic. The basis of the federal solution to the community problems, which consisted in an extremely strict territorial division, was provided by the objectives of both largely territorially entrenched communities. The idea behind this solution was that within these territorially homogeneous areas both the Flemish and the Walloon (sub)nations would enjoy better opportunities for development.\textsuperscript{16} In the considered option for territorially demarcated language homogeneity, Brussels was clearly seen as a divisive and troublesome issue.

The linguistic hybridise of Brussels, and the presence of a considerable language minority in a few facilities - and bordercommunes, formed an obstacle to consistent implementation of the territoriality principle. Nevertheless, the 1988-89 state reform also provided in a regional status for Brussels, which is equal in strength to the status of the other regions, except for a few details. Co-operation between both communities in regional matters in Brussels is taken care of through an intricate system of 'checks and balances', and includes guarantees for the Flemish minority in the capital.\textsuperscript{17} As far as community matters are concerned, the two communities do not depend on each other. They administer these matters largely autonomously, or in consultation of their fellow language-users in Flanders and Wallonia.\textsuperscript{18} The fact that Brussels has become a third region, constituted an important concession by the Flemish, for this inevitably meant that Brussels would never really belong to Flanders and was 'lost for good'. On the other hand: the price the French speaking had to pay was the definite demarcation of Brussels in 19 communes and guarantees for the Dutch-speaking minority. This meant they would not be able to capitalise on their superior numbers in the capital and had to concede an important role in regional government to the Flemish minority.
After the most recent state reform the option for the territorial definition seems to have gained preference. The final stage in state reform has drastically redefined the political landscape around Brussels. With the 1993 reform the struggle seems to have been decided in favour of territorial demarcation, more specifically of the regions. Only for the Dutch-speaking minority in Brussels does logic in terms of 'groups' still apply. The delicate equilibrium in Brussels and the institutional ties between the Dutch-speaking in Brussels and Flanders have largely been maintained. More study is needed on the repercussions the territorially-oriented policy has on the political position of the Dutch-speakers in Brussels. Because of their minority position in the capital, the ties with Flanders have always been an essential element in the balance of power for the Dutch-speaking inhabitants of Brussels. The question remains to which extent these ties will continue to exist in future.

2. Regional nationalism

Never before have politicians, lobby groups and editorialists searched so intensely for an answer to the question of the repercussions political and institutional developments might have for the future of the Belgian state. In August 1996 the francophone Newspaper Le Soir printed a number of interviews with politicians and academicians, entitled Belgique requiem ? ('A requiem for Belgium ?') Two months later there was a lot of speculation in the editorials of the Dutch-speaking newspaper De Standaard about the future of Belgium. It is evident to every observer that the Belgian state is suffering an acute legitimacy crisis, but whether the federalisation process of our country has heralded the beginning of the end and the Belgian structures will finally crumble under the pressure of centrifugal powers from within and outside, remains to be seen.

It is a fact, however, that the Regions, as a consequence of far-reaching federalisation of Belgian state structures, occupy a place of their own in the political field. The current political landscape is characterised by a layered political structure, in which different decision-making levels -regional, national and European/international - have taken over the tasks of the traditional state apparatus. It is debatable if the role of the Belgian state will consequently come to an end. It remains to be seen whether the state reform - as some claim - will finally lead to the disintegration of Belgium, or if striking a new balance will strengthen the central authorities.

Traditional state structures are undergoing a period of change, under the influence of the internationalisation of politics, economics and cultural affairs on the one hand, and on the other hand, because of the influence of nationalistic political movements. Both developments seem to contain the germ for the delegitimation of the traditional Belgian state structure. The role of the unitary state as a symbol 'par excellence' of sovereignty seems to have come to an end, and central state organs no longer hold the monopoly of political power. Decentralisation of state power has severely weakened the federal institutions and provokes questions on the relevance of the Belgian state, especially in nationalistic circles.
The question of legitimacy of the Belgian state structures and finally also of the existence and the continuation of a certain Belgian specificity, the so-called 'belgitude', has been raised before. Against the background of institutional developments and a thriving nationalistic movement both in Flanders and in Wallonia, this issue is of fundamental importance. Will the Belgian framework lose its current significance, and reincarnate into another identity or identities? Are these identities necessarily incompatible? Or are they compatible and complementary? And what is the significance of this evolution for Brussels?

2.1. The nationalism of the regions

The end of a 'national' Belgium has created opportunities for the creation of new territorial identities in Flanders and Wallonia. The revival of regional nationalism in both regions has brought the relationship between identity and territoriality to the forefront in a new way. A general consensus seems to grow, at least on a national level, on the idea of a Flemish and a Walloon nation which should both have the opportunity to develop in themselves, possibly within a federal umbrella-structure. The well-defined territorialisation of political life in Belgium, then, is a basic component of political projects that should shape those nations. This nationalism of the regions is comparable to the standard definition of nationalism, which states that the identity of each people should be reflected in the state structures and the balance of power.

In order to legitimise nationalistic aspirations and to solidify the idea of two separate societies, each in its region, reference is often made to the so-called historical 'antagonism' between Flanders and Wallonia. An argument which is often put forward in that respect is that Belgium was an artificial construction from the very beginning.

In order to avoid every association with extremist influences, competent authorities make sure not to publicise their policies as nationalistic. The Flemish political agenda, for instance, is generally considered to be 'acceptable' or at the most 'moderately' nationalistic and the term 'nationalism' in the context of activities organised by Flemish authorities, mostly has the connotation of 'healthy' and 'well-understood'. Or it is altogether replaced by paraphrases in which the terms 'Flanders' and 'Flemish interests' figure prominently. The basic idea is that the identity of a nation has to be translated in maximum political autonomy within a well-defined area. Nationalistic aspirations thus present themselves as a 'natural' response to the legitimate aspirations of 'the people' or 'the nation', and as a rational basis for state formation or state reform.

The community is defined as a 'pre-political' entity, and it is exactly loyalty vis-à-vis this pre-political entity of a community which constitutes the vital foundation for political loyalty and legitimacy. An effort is made to secure congruence between the political and the pre-political field (the people). The nationalistic formula starts from the premise that also in reality there is something called 'a people' or 'a nation', which distinguishes itself because of its specific make up from other peoples or nations, and
which provides a strong, natural platform for mobilisation for political action. In
nationalistic thought it is absolutely essential not to abstract from political links, and
not to sever the ties which bind political unity and factual, so-called natural ties which
should already be manifest in society.31

Less consensus exists on the characteristics of the nation and the way in which it
should be constructed. Almost all central elements in nationalistic discourse, whether
national or international, is subject to variation and internal contradiction. Concrete
implementation of nationalistic aspirations is thus characterised by a multitude of
contradictory ambitions and interpretations of the nation's aspirations and the
objectives of the nationalistic project.32 Nationalistic rhetoric for instance comprises
widely differing visions of Flanders as a national unit, ranging from a biological-
historical fact (the Flemish people), on to cultural region or language community, to
Flanders as a political entity. The common denominator of Flemish nationalism
consequently is a cover-term for widely differing political projects: from the
acquisition of cultural autonomy, on to the struggle for maximum cultural and
political emancipation in a federal or confederal state, to separatism and the
independence of Flanders.33

2.2. Symbolic redefinition

Legitimisation of new political institutions and the powerful position of the
political establishment in the Regions resulted in a shift of the political frame of
reference from the federal level to that of the regions. Whereas Belgium is
increasingly being disposed of as an artificial construction, Flanders and Wallonia
stress their status as fully-fledged entities, with differing interests, different political
objectives, and a different identity.34

This symbolic redefinition is not only apparent in policy decisions which are
taken on the level of the Regions, but also in political rhetoric of the regional
authorities. The way in which the political community is pictured is at stake here.35
The political system indeed needs a certain 'sense of community' as an indicator of
political cohesion and the legitimacy of the political system.36 Consequently, it is in
the interest of the new political elite to shift the identifications of the traditional state
level to that of the regions. The 'deelgebieden' now make up the 'locus' of political
activity and political objectives are primarily formulated in terms of the interests of the
respective community.

The premises of this regional-nationalistic formula thus are a part of what is
considered to be logical and self-evident, and fundamentally part and parcel of Belgian
political practice.37 The focal point in the thought processes on the role of the state
has thus shifted from the question which functions the state should hold in the
construction of a democratic society to the question of membership of the political
community. The conceptualisation of 'the state' has changed from 'the-state-as-a-
centre-of-power' to 'the-state-as-a-limit'.38 The discussion on the formation of the
nation and national identity flows from this evolution. The identity of the nation in
this respect has become the focus of attention. Who is the nation? Who has a place
within the real or symbolical limits of the nation? Which criteria distinguish the nation from other entities defined in national terms? These questions lead us to the notion of identity and the way in which this concept is being politicised and ideologised.

2.3. Who is the nation?

Every nationalism is 'the political product of a particular set of circumstances that waxed and waned in content and support as circumstances changed'. Although the discourse starts from a definition of the nation as a natural entity, the meaning of the concept of identity is rather problematic. In itself the concepts of 'nation' and 'national identity' do not have an object of description. Nation and national identity do not exist in a 'coagulated' way. They are constructed throughout the discourse 'attaching significance to perceived differences between people as well as to sensed affinities among them'. In order for them to be significant, the concepts of nation and national identity in their concrete use have to be filled in with relevant elements from the social reality. There are, however, no natural or necessary criteria to distinguish one nation from another or to determine the exact contents of the term 'national identity'.

It is a fiction that Flanders and Wallonia would be 'more natural' entities than Belgium. The relation between the two language communities, which now constitute the basis for political action, is rather the result of the balance of power between both communities and of the perceptions both communities have of themselves and of each other.

The absence of parameters which could have served as a basis for natural or necessary distinction, implies a number of 'choices' in the construction of identities. The representation of the nation, and the definition of the own identity is carried out on the basis of partial characteristics, which have to symbolise the whole. The well-known maxim 'The language is the whole people' is a perfect illustration of this. And even if one can detect some underlying structure in the selection of 'symbolical markers' - in order to fill in the concept of nation one usually draws on the store of elements that reinforce identity - the eventual choice of an element as a symbol for the identity of a nation is primarily a random-process. What criteria are in the end important to determine membership of a nation and to delineate collectivity defined in national terms, runs parallel with the historical, socio-economic and political context in which a nation takes shape.

In the political discourse in Flanders strong emphasis is put on the cultural component of the nation's aspirations. The Flemish identity or singularity is an identity which is first and foremost interpreted in terms of language. This can of course be explained through the history of socio-economic and political discrimination on cultural linguistic grounds, within a unitary state dominated by a French-speaking establishment. The cultural identity, crystallised in the language, refers to a set of particular characteristics and of objective structures which characterise the pre-political nature of a nation and simultaneously of a process of subjectivisation, a form of emotional cohesion. The identity which is defined in cultural linguistic terms
formulates an answer to the question who and what the nation is, who is part of it and what distinguishes the nation from other communities. Language then becomes a metaphor for the specificity of a nation. It is the translation and expression of a particularity, a representation of communality.\footnote{46}

The definition of a nation is furthermore a representation, an interpretation of social relations. It is a way of positioning oneself in the world and in relation to others.\footnote{47} ‘All identities are constituted within a system of social relations and require the reciprocal recognition of others. Identity […] is not to be considered a ‘thing’ but rather a system of ‘relations and representations’ […] the maintenance of an agent’s identity is a continual process of recompositions rather than a given one, in which the two constitutive dimensions of self-identification and affirmation of difference are continually locked […] identity is seen as a dynamic, emergent aspect of collective action.’\footnote{48}

Therefore, we should picture a Flemish nation not only from the position Flanders wants to occupy in Europe and from the legitimacy the concept of a Europe of the Regions - rather than of states - grants to this nationalistic formula, but also in relation to Belgian structures on the one hand and Wallonia/French-speaking Belgium on the other hand.\footnote{49}

Although, on the Flemish side, the language component remains a central element in the definition of the concept of nation, a number of developments seem to indicate the growing importance of the territorial component in the nationalistic aspirations. ‘Flanders’, as a culturally and geographically demarcated area, increasingly constitutes the basis for the formulation of political demands and the defence of interests. To which extent that touches upon the ties with the Dutch-speaking inhabitants of Brussels, and what exactly this development means for the ambiguous position of the bilingual area, is a question that needs to be answered.

3. Brussels

3.1. Brussels: a part of us?

In the previous chapters we have put forward arguments that support the theory that the federal state of Belgium increasingly evolves in the direction of territorially demarcated subsectors. In this evolution Brussels clearly constitutes an obstacle. The existence of a linguistically hybrid area no doubt acts as a brake on the territorial division of the country.\footnote{50} Both for Flanders and for Wallonia the ties with the Brussels Region are important, and it cannot be denied that a lot of interests of both Regions are concentrated in Brussels. Apart from the symbolical and cultural importance of Brussels, the region constitutes a true superpower, thanks to its concentration of economic and political decision-making power in a bilingual area. The Brussels' skyline, with its numerous office blocks, leaves no room for doubt as to the service sector expansion in the city. Almost all big Belgian companies and a great number of multinationals have their seat next to the politically powerful institutions. The conquest of Brussels of European institutions and services, and in their wake the
numerous internationally operating businesses, have become part of the history of Brussels' urban evolution. More than 30,000 companies, which offer employment to approximately 550,000 people, have chosen Brussels for their headquarters. In addition, more than 1,100 international institutions and some 200 embassies are present in the metropolitan area. Brussels occupies the fourth place in the world ranking of congress-cities, after London, Paris and Geneva. In terms of financial importance Brussels takes the seventh place. The federalisation process has not ended this tendency towards concentration. The number of political decision-making organs with their seat in Brussels, has not diminished throughout the past state reforms; it has on the contrary increased. Brussels also exerts an enormous influence as an employment magnet which attracts tens of thousands of commuters each day.

Symbolically speaking Brussels continues to appeal, both as the capital of the country and as the capital of both communities. The positions of the communities overlap with the territorially demarcated regions. Particularly from the Flemish point of view it is evident that Brussels has to remain a part of both communities. Naturally, given its vision of political identity, Flanders keeps emphasising its ties with the Dutch-speaking people in Brussels. This vision expresses the idea of the Flemish community as a unit with a very clear cultural message which cuts across regional borders. Though the political organisation of society is also in Flanders increasingly determined by the territorial logic, severing the community ties with the Dutch-speaking population in Brussels is for the moment inconceivable.

On the French-speaking side, matters are a bit more complex. The identification between Wallonia and the French-speaking part of Brussels has never been unequivocal. The Francophone alliance between Wallonia and Brussels consisted of a strategical co-operation of Francophone powers on certain crucial moments. Besides, the French-speaking majority in Brussels can survive without Walloon political support.

Flanders, on the contrary, does not want to let go of Brussels. At least not for the time being. In order to emphasise the ties with Brussels, the Flemish Community has decided to choose Brussels as the capital. Given the fact that the Flemish Community and Regional institutions completely overlap, this meant in reality that all Flemish political institutions and the whole Flemish administration had to be accommodated in Brussels. Though the importance of this choice is largely symbolical, and Brussels also serves as the capital for the French-speaking Community, this Flemish decision in favour of Brussels has seriously irritated the French-speaking community. In certain Francophone circles, the aspiration of Flanders to 're-conquer Brussels' is a thesis that seems to have taken root.

Apart from the location of Flemish institutions, various policy initiatives are aimed at supporting Flemish presence in Brussels. One element of this support consists in strict conformity with the often controversial language legislation in Brussels. The expansion of a social cultural network and a Flemish educational network in the capital, are also strategies which have been pursued since the 70s. More recent initiatives from the Flemish Community Commission have been aimed at increasing the capital's popularity as a place to live. The initiatives which in this
respect clearly fit the bill are the promotion of Brussels as a 'Bustling City', the incentives for local development projects, and for a program called 'Brussels Viable Capital'. All these projects aim at persuading Dutch-speaking people to come and live in Brussels. The Flemish Community Commission has recently launched the idea of housing subsidies after studies had shown that only 2% of all Flemish civil servants live in Brussels, which boils down to 227 civil servants out of a total of 10,830. The symbolic importance of this initiative must not be underestimated, but the real impact is limited. Exactly 1,000,000 BEF was earmarked on the VGC budget (Flemish Community Commission) for housing subsidies. This budget would allow for 10 civil servants to be lured into Brussels, hardly the ideal way to re-conquer Brussels.

In spite of these initiatives the ties between Brussels and Flanders seem to be less tight than they seem officially. This is in the first place the fact because the Regions are gaining importance, to the detriment of the Communities. This of course has its repercussions on the ties between Flanders and the Dutch-speaking part of Brussels. Solidarity between both consists in essence of organisations, networks and tangible ties based on mutual interests. These mutual interests are becoming less evident, because of the intense territorialisation policy. The Vlaamse Gemeenschapscommissie (VGC) (Flemish Community Commission) has repeatedly insisted on the fact that Brussels has its own specific problems and thus needs its own specific problem-solving approach. In addition, Flanders invests primarily in the its peripheral municipalities around Brussels and does not have any competence with regard to matters in the metropolitan area. Flemish politicians in Brussels have to rely on themselves and on the co-operation between the two communities in Brussels. Thanks to the system of 'checks' and 'balances', the French-speaking inhabitants of Brussels have no interest in making an issue of delicate matters, as this would lead to a deadlock in Brussels regional institutions and would cause the whole system to implode. The interests of Dutch- and French-speaking furthermore, often run parallel.

Both language groups are thus forced to assure smooth proceedings in the metropolitan region. It is no coincidence that Jan Beghin, vice-president of the Brussels Council, stated that Dutch-speaking inhabitants of Brussels do not always agree with the view held in Flanders that their region is controversial.

3.2. Language and territoriality in Brussels

Contrary to developments on a federal level, language and territoriality have played an important role in the metropolitan area. Because of the fact that Flanders and Wallonia could not agree on whether Brussels had to be considered as a separate region (French-speaking vision) or as an emanation of both communities (Dutch-speaking vision), the institutional solution for Brussels was the result of an extremely difficult compromise that tried to reconcile the antagonistic aspirations of both language groups. Because Brussels is a linguistically hybrid area, a solution was sought on the basis of a mixture of both individual as well as group rights. Consequently, Brussels administration is characterised by a combination of cooperation in regional and bi-community matters and extended self-government of
communities in cultural and personal matters. This settlement for Brussels is an outstanding example of institutionalisation of the conflict between the territorial and group-oriented demarcation of solidarity.

Further stages of federalisation did not fundamentally alter this settlement. Language has remained one of the most important factors of identification in the political system. It allows the Dutch-speaking in Brussels to feel politically connected with Flanders. On the other hand, this demarcation invites the French-speaking who live in the peripheral municipalities of the Brussels to identify with their fellow language-users in Brussels. This also explains why it is almost impossible to limit community rivalry in the capital to Brussels. Nevertheless, a process of change seems to be on its way. Among the Dutch-speaking inhabitants of Brussels, there is an ever-increasing plea to reinforce the Flemish political leg in the capital. The VGC (Flemish Community Commission) wants more competence and means to implement their policies in a more autonomous way. Though, for the time being, this does not seem to point at a clean break with the tradition of solidarity amongst the Dutch-speaking, this question seems to run parallel with the territorialisation of political life in Belgium. This also has to do with important shifts on the French-speaking side. The latest reforms have largely weakened the French-speaking Community to the advantage of the Walloon Region and the COCOF (French-speaking Community Commission) in Brussels. The direct consequence is that the French-speaking from Brussels and Wallonia can emphasise other issues in their welfare and education policies. The community ties between Wallonia and the French-speaking part of Brussels have thus become even looser. At the same time this means that the territorial identity is being strengthened in favour of the French-speaking part of Brussels on the one hand and of Wallonia on the other hand, which is entirely in accord with the dominant tradition on the French-speaking side.

Traditionally, the Walloon view their political heritage and consciousness defined in territorial terms. The indirect consequence of the latest state reform is that the asymmetry in the organisation of the administration of community matters in Brussels strongly increases, since the Flemish Community in Brussels is still strongly linked to Flanders, while the French-speaking community in Brussels is not linked to its parallel linguistic group in Wallonia in the same sense. The reorganisation by the francophones has important repercussions on the Flemish Community in Brussels. The political consequences of this reform could be far-reaching, because on the Flemish side the ties between the Flemish Community and the VGC have been maintained and the VGC has a lot less competence and clout than its French-speaking counterpart. To what extent the COCOF and the Brussels Region will identify with one another, therefore, is also a question of great importance for the Flemish component in Brussels.
3.3. Brussels: bipolar division, multicultural reality

Linguistically hybrid areas like Brussels illustrate that political identification is not always unequivocal and sometimes even impossible on the basis of the language criterion. Language can not serve as a basis to clearly determine which position the group of bilingual inhabitants and linguistically hybrid inhabitants should occupy in Brussels. Sociological reality in this bilingual area can simply not be reduced to an unequivocal link between language and territoriality. Brussels cannot be identified as an 'abutment' for Flanders or Wallonia, or as Dutch- or French-speaking region as such. Brussels is simultaneously capital of the country, capital of both communities and capital of Europe, and as such it is a meetingplace for both communities.\textsuperscript{59} Sociologically speaking, we can thus safely state that the Brussels' Region is a grey zone 'par excellence', as it contains a large group of bilingual inhabitants and foreign speakers, who can hardly be identified as members of either of the two officialised communities. In addition, the region of Brussels is entirely characterised by this bilingualism and multilingualism, and French speakers, Dutch-speakers and foreign speakers live with and next to each other in Brussels.

Moreover, on the level of population, the choice for one or the other community is officially undetermined. The absence of the subnationality principle and the impossibility of determining by a census that considers itself as part of one or the other community, is part and parcel of the Brussels compromise. The communities are competent, not for people, but for institutions which, by virtue of their activities clearly belong to one of the two communities. In other words, institutions officially belong to one of the two communities but people do not. Every inhabitant in Brussels can choose the institutions and services of his own free will. Somebody may, for instance, choose to send their children to a Flemish school, to take part in initiatives in French-speaking associations and to seek medical assistance in a bi-community hospital.

On the institutional and political level, however, this principle of free choice is not maintained. Institutionally and politically bi-polarity is the governing principle. In other words: the political life in Brussels is determined by the polarisation between the two language communities in Belgium. The Brussels' compromise is indeed based on the paradigm of the presence or the confrontation between two communities which are recognised as such: the Dutch-speaking and the French-speaking. As we said before, in this paradigm the complex sociological reality in Brussels is not taken into account. A large part of the population of Brussels cannot be positioned within the framework of the bi-community composition of Brussels.

To what extent this institutional bi-polarity of Brussels will be maintained in future, is an important question. Various factors raise the suspicion that the cleavage between the French-speaking and the Dutch-speaking will be jeopardised by new developments. In the first place there is the intense federalisation process; although political discourse attaches great importance to the ties between Flanders and Brussels, rational reasons for a decrease in involvement in Brussels because of the territorialisation of politics in Belgium present themselves. In her analysis of the
relationship between Flanders and Brussels, L. Hooghe states that a territorialisation of Brussels' politics would give the Flemish government more elbowroom vis-à-vis the Francophone demands in the Brussels' peripheral municipalities. This development has become clear for quite a while on the French-speaking side. Without dismissing Brussels officially, Wallonia has clearly distanced itself from Brussels politics. It is not inconceivable that the Dutch-French-speaking divide in Brussels will fade out and will be replaced by identification on the basis of the territorial criterion, which is shared by all inhabitants in Brussels. Indeed, language is not the only possible principle for political mobilisation.

It is very well possible that in the long run the political distinction will manifest itself on the basis of territorial loyalty with Brussels. This would allow instances in Brussels to distinguish themselves from other well-defined centres of power such as Flanders and Wallonia. The European and multicultural component in Brussels could stimulate such an evolution, and Brussels' European ambitions may be one of the strongest guarantees for co-operation between both language communities in the capital. It can not be denied either that the presence of a considerable group of 'new Belgians' and foreigners will influence the balance of power in the capital. The fact that they are not really tuned in to the break between the Dutch-speaking and the French-speaking, may in future create opportunities to set up a political organisation which would not in first place be based on the 'ethnic-linguistic' break. Whether or not in this scenario with Brussels as a protagonist a convergence of interests can be expected in the near future, and if so to which extent, remains to be seen.

Conclusion

When we probe into the significance of territoriality and identity in Belgium, we cannot ignore the role Brussels plays. It is, conversely, impossible to unlink the developments in Brussels from the significance of the principle of territoriality on the one hand and the way in which the concept of identity is defined 'nationally' and regionally on the other hand. This 'definition' is a dynamic process, which has not ground yet to a standstill through the latest state reform. Furthermore, the repercussions for the metropolitan area have not become clear yet. An in-depth analysis of the significance of the concepts of territoriality and identity in the metropolitan area, is rendered more complicated by the dynamic nature of social political relations in the capital. Basing ourselves upon recent political developments in Belgian, we tried to sketch their possible relevance for the capital.

A first major broad line we have tried to draw in our analysis, is the one concerning the evolution towards far-reaching territorialisation of political life in Belgium. After the most recent state reform, the struggle between territoriality and 'group' logic seems to have been decided in favour of the Regions. The federalisation of state structures was constitutionally confirmed in 1993, and since that time have the Regions occupied an increasingly prominent place in political decision-making. 'Group' logic only retains its dominance for the political organisation of the Dutch-speaking in Brussels. This evolution evidently provokes questions about the future
position of the Dutch-speaking in Brussels and about the political viability of the institutional model in our capital.

A second major broad line refers to shifts in the political frame of reference. As a consequence of the far-reaching federalisation the 'sub-states' occupy a place of their own in the political decision-making field. The current political landscape is characterised by a layered political structure, in which various decision-making levels have taken over the tasks of the traditional state apparatus. The substates now have evolved to the nerve centre of political activity. As we have indicated, the legitimisation of the new political institutions in the substates and the position of power of the political establishment resulted in a shift of the frame of reference from the federal level to the regional level.

Following the above-mentioned developments, we can distinguish a third major broad line, namely developments in the political identification process. The concept of identity in Belgium is constantly evolving, spurred on by nationalistic aims in Flanders and Wallonia. The connection between territorially and identity has been brought to the foreground in a new way, because of the revival of regional nationalism in both regions. The institutional developments towards a federal state structure and the nationalism of the regions have led to a tightening of group-linked loyalty with territory. National and territorial logic seem to converge more and more in the redefinition process. Flanders and Wallonia as culturally and geographically demarcated areas increasingly present the profile of a nation and more and more serve as a platform for the formulation of political demands and the defence of interests.

These developments in Flanders and Wallonia, together with political and social developments in Brussels itself, signal possibilities for cutting across the polarised thinking in the capital. The far-reaching territorialisation of political life in Belgium, the institutionalised co-operation between the Dutch- and the French-speaking in Brussels' regional institutions, the often parallel interests between both communities in the capital, the presence of a large group of foreigners, 'new' Belgians and the international component in Brussels; all these elements could in the long run contribute to cutting across thinking in terms of a break between the Dutch-speaking and the French-speaking. It is, in other words, not inconceivable that the traditional community break in Brussels will lose its relevance to the advantage of an identification on the basis of the territorial criterion, shared by all inhabitants. The political identification process has been and undoubtedly will be influenced by other fault-lines present in the capital: the ethnical/cultural break (the Belgian/non-Belgian break, the European/non-European break), the socio-economic break between the well-off and the less well-off and the ideological break between the left and the right.

Whether Brussels will in the future become more of a uniting or a dividing factor in Belgium, is an important question to be asked. Though the outcome of recent developments cannot be foreseen, it is undoubtful that the existing institutional framework and the balance of power between the Dutch speaking and the French speaking community in Belgium as a whole and more specifically in Brussels, will undergo the influence of new developments. It is not unthinkable that the linguistic divide in the capital will be cross-cut by other fault-lines and result in a strengthening
of the territorial criterion, shared by all inhabitants of Brussels. This will imply a fundamental change in the political identification process in the capital and result in a repositioning of interests and political aims both in and outside the metropolitan area. It is therefore of great importance to monitor further political and social changes both in Belgium and in Brussels.

Note on Jerusalem

Determining the significance of our analysis for the society model and its problems in Jerusalem remains up to us now. It cannot be denied that the recent developments in the concepts of territoriality and identity in Belgium in general but also in Brussels more specifically, are the result of a number of very specific historical and political balances of power in our country. From a unitary state comprising two major linguistic Communities, Belgium has evolved to a federal structure in which these language Communities enjoy a large degree of autonomy within well-defined borders. Because of the centralisation of political and economical power in Brussels and its role as the capital of a multilingual capital, the legitimate presence of both language Communities has never been an issue of discussion. Dutch- and French-speaking, but also increasingly foreign-speaking inhabitants live with and next to one another and there is no territorial segregation whatsoever between both major language Communities in our capital. There is no neighbourhood segregation on the basis of the ethnical/linguistical break in Brussels. Moreover, identity is, certainly in Brussels, not a concept which can be analysed in an unequivocal way in terms of language.

It is evident that the problems in the society model of Jerusalem is of another order. The role territoriality and identity play in the Israeli-Palestinian conflict about Jerusalem, is much more crucial than the role both elements have played in the community conflict about Brussels. Territorial claims lie indeed at the core of the problem; the legitimate presence of both Communities is an issue of sharp conflict. Problems in Brussels consequently seem to offer few leads for Jerusalem. The two conflicting claims on Jerusalem, for one party the undisputed capital of the Palestinian state-to-be, for the other the inalienable capital of Israel, will be even harder to reconcile because of the global power imbalance between the Israelis and the Palestinians. In connection with identity and political identity, the discrepancies with the situation in Brussels are much stronger than the parallels. The breaks between Israelis and Palestinians are much sharper and larger than the community break in Brussels. Identity and identification seem to be defined in a more explicit way and have greater significance for and repercussions on the everyday life and the level of well-being. On top of that, both public and private life in Jerusalem are characterised by a clear segregation between both groups.

This segregation is also maintained on the level of territoriality, as witness the segregated neighbourhoods and the sparseness of 'mixed' living areas. This does not mean there are no contacts between Israelis and Palestinians in Jerusalem, but the
balance of power between both groups does not seem to offer many incentives for immediate or mid term reconciliation. The reinforcement of the internal breaks between both groups, however, does indicate that the thinking in terms of homogeneous blocks and lobby groups does not seem to correspond to reality and that breaks and balances of power of another nature will exert their influence on the political identification process. In theory, this development offers opportunities to strike alliances and reach identification based on shared interests across ethnical borders. Though such an approach seems to be inconceivable at this moment, it may offer long term perspectives for a solution of the conflict in Jerusalem.

Notes

1 Our starting-point is that nationalism can be understood as a symbolical system of significance within which the limits of the political Community and the identity of that Community are negotiated and formulated: nationalism as an ideological discourse on which political practice is based.


3 Especially linguistically hybrid areas like Brussels illustrate the thesis that this identification is in first place a political reality which, on the level of the population, is not always unequivocal and sometimes even impossible.

4 The political struggle for more autonomy in the different regions can be understood as such.


8 The 1932 language law stipulated language homogeneity in Flanders and Wallonia in the entire public sector. Though in the current political struggle for power it seems in first place Flanders has come to consider the territoriality principle as sacrosanct, it is important to remember that territorial language homogeneity was carried through primarily under Walloon pressure. It was the political elite in Wallonia which opposed itself against general bilingualism and did not want to damage unilingualism in Wallonia. Because of the numerical minority position of Wallonia and the lack of knowledge of the Flemish language, their fear was that in a bilingual, unitary Belgium the Walloons would become a minority and that they would have to undergo the dominance of the Flemish and
catholic North. That is the reason why they would have preferred the individual language settlement to be replaced by a territorial solution.


11 The federalisation of the Belgian state was based on a compromise that combined both aspirations and resulted in the recognition of three Communities (The Flemish Community, The French Community and a small German-speaking Community) and three Regions (Flanders, Wallonia and Brussels).


13 The ties with Brussels could only be maintained by virtue of accepting a deviation from the territoriality principle. This would lead to the option in favour of non-territorially linked communities.

14 The fact that the Flemish majority of the country has been reduced to a minority in the capital and that Brussels has evolved from an originally Flemish city to a predominantly French-speaking one, was and still is very much considered to be a great loss in Flanders.

15 It was not until 1988 that an agreement was reached on the status for Brussels.

16 Though this development runs parallel with a general reinforcement of regionalism in most western European countries, we want to point out that in Belgium this process started as early as the 30s.


18 The only exception to this are the so-called bi-community matters and institutions. These are managed by both language groups in the Joint Commission for Community Matters.

19 The Saint-Michaels agreement and the 1993 reform constitutionally stipulated that Belgium hitherto was a federal state. The amendment of the constitution also stipulated direct Community and Region Council elections.

20 More specifically the editorials which were entitled 'Het Belgie-debat' ('The debate on Belgium'), which appeared in 'De Standaard' in October 1996.

21 Originally the state reform was meant as a strategy to enhance the state cohesion by granting Flanders and Wallonia a certain degree of autonomy. One hoped to be able to come up with a satisfactory solution for the contrasts between Flanders and Wallonia through the federalisation of the unitary state.

The federalisation has in a certain sense led to a factual division of the Belgian population, certainly on an institutional level.


We want to point out that this is exactly Gellners standard definition of nationalism.


In the literature there is a lot of controversy over the question whether nationalism can indeed be explained through the existence of a nation as a pre-political entity. Nationalism in that case is nothing but the formulation of the political aspirations of an existing nation. The idea that a nation should be interpreted as the product of a nationalist ideology is, in my opinion, far more correct. We follow E. Gellner in this respect, when he states that nationalism produces nations and not vice versa. Gellner, E. 1983. Nations and nationalism. London, Basil Blackwell. For a concise overview of different currents in literature on nation, nationalism and national identity, cfr: Hutchinson, J. and A.D. Smith (ed.). in 1994. Nationalism. Oxford/New York, Oxford University Press.

The suspected naturalness of nationalism is an important element of ideologization, but this naturalness is deceptive : the ideology exactly serves to suggest a suspected naturalness.


It thus is a myth to refer to the Flemish vision on the state reform.

The starting-point here is that both Flanders and Wallonia would be natural and homogeneous entities.

In ‘De pragmatiek van de Europese nationalistische ideologieën’ (‘Pragmatics of the European nationalist ideologies’) J. Verschueren claims that western Europe would not be capable of thinking other than in terms of national, preferably ethnically homogeneous states. This would at the same time explain the incapacity of western Europe to elaborate a pacifying alternative for ex-Yugoslavia.


37 This was not different in the ‘old’ Belgium. Now, however, we end up in a situation in which Flanders and Wallonia want to assert themselves as separate entities with their own character. In my opinion, this does not necessarily have to counteract the Belgian level. On the contrary, we could state that the Flemish and Walloon nationalism find their inspiration exactly in the existence of the Belgian construction.


40 Identity is a difficult and vague concept, however it is politically speaking useful precisely because of this vagueness. In first place it functions as a ‘symbolic marker’. Simultaneously it points at the common aspects - that which makes the nation into a community - and at the particular - that which makes the nation unique. It draws the limits of the community which is defined in national terms, exactly by opposition to other communities, other hypothetical nations.


44 Identification processes are influenced, both by internal dynamics and by external forces. Featherstone states: ‘The process of formation of (national) culture cannot be understood merely as a response to forces within the nation state, but must be seen in relation to forces outside of it: the potential for the development of national identity and cultural coherence as relationally determined by the structures of the shifting desequilibriums of power and interdependencies of the figuration of nation states within which a particular country was embedded’. Featherstone, M. 1993. ‘Global and local cultures’ in Bird, J. [et.al.] (ed.). *Mapping the futures: local cultures, global change*. London, Routledge: 169-187. See also Jenkins, R. ‘Rethinking ethnicity: identity, categorisation and power’, in *Ethnic and racial studies*, vol. 17, nr. 2.


49 Which is the reason why we state that the Flemish and Walloon nationalism find their inspiration exactly in the existence of the Belgian construction.

50 Let us yet again point out that on a political level it is only a small minority which advocates separatism. The demand for further federalisation or even division of the country, fails to raise a lot of interest with the Belgian population. Various opinion-polls have measured a great degree of indifference, even in Flanders, which is always said to possess strong national feelings.


52 Though not unimportant, the language legislation has only been able to exert a very limited influence on the language situation in the capital. Detant, A. 1995. *De toepassing van de taalwetgeving in de Brusselse gemeentelijke instellingen [The application of the language legislation in communal institutions in Brussels]*. Brussel, Vubpress, 1995.


55 The existence of a considerable group of French-speaking inhabitants in the 'facility-communes' and the peripheral municipalities, explains why the French-speaking had rather not explicitly mention the territorial borders of their community.


57 The Flemish Community comprises Flanders and the Flemish institutions in Brussels; the French Community comprises Wallonia and the Francophone institutions in Brussels. However both Communities in Brussels are ruled by specific community institutions in the capital: the VGG on the Flemish speaking side, the COCOF on the French speaking side. The position of these Brussels’ community institutions with regard to their Community fellows in Flanders and Wallonia has, from the very beginning, been different. On the French speaking side the autonomy of their Community fellows in Brussels was recognised; on the Flemish side however, the option was one in favour of a
strong institutionalised link between the Flemish Community in Flanders and its counterpart in Brussels. As a result, the Flemish speaking Community institutions in the capital were much more limited to act autonomously from their 'mother' Community in Flanders.


59 The situation around Brussels is consequently often described as 'Belgium in miniature'. The Community relations in Brussels indeed reflect the relations between both language communities on a federal level. The situation is a reverse reflection however, for we have to do with a double majority/double minority system. The Flemish majority on a federal level clearly occupies a minority position in the capital. The French-speaking minority on a federal level on the contrary, clearly holds a majority position in Brussels.


61 In this respect we want to make reference to the paper S. Hasson prepared in the framework of the Brussels-Jerusalem research: Hasson, S. Territory and identity in Jerusalem.

62 Apart from the presence of a considerable group of bilingual inhabitants and foreign language speakers who do not fit into the polarising scheme of Flemish versus French-speaking, language evolution in Brussels proves to which extent language and identification patterns can change. Especially in Brussels, many inhabitants with Flemish as their mothertongue have first become bilingual inhabitants and in later stages French-speaking, under the influence of socio-economic and linguistic-political factors.
CONCLUDING REMARKS
THE JERUSALEM QUESTION
IN THE LIGHT OF THE BRUSSELS EXPERIENCE

Peter Demant (IPCRI)

Dedicated to Lotte Salzberger

Introduction

The following article is an attempt to synthesise the research results and to draw a number of conclusions from the Jerusalem-Brussels exercise. The main parallelisms and differences between community conflict and conflict resolution in both cities are compared, and a few guidelines about the Brussels model’s applicability to Jerusalem are drawn.

1. Similarities and differences between Jerusalem and Brussels

Jerusalem and Brussels are two divided cities that over the past century went through a very fast demographic and territorial expansion process. In both cases, polarisation in the city between its two populations reflects a deep contradiction on the national level. There is a rough equivalence in the majority-minority ratio, with 28% Arabs in Jerusalem, and 10-20% (or more) Flemings in Brussels. I.e. in both cases, there is dichotomy with the absolute majority opposed to a substantial minority. Moreover, both cities are in the process of expanding, and while this expansion is at least partly driven by socio-economic factors, it has clear and substantial political consequences for community relations, both in the city itself and on the national level. In Brussels, attempts were made to stem this expansion as part of a bi-community appeasement arrangement; in Jerusalem, it continues as part of the superiority of one community vis-à-vis the other. If one looks at the metropolitan area of ‘Greater Jerusalem’, including Palestinians towns and villages and Israeli settlements in the region around Jerusalem, Jewish Jerusalemites are (meanwhile) surrounded by a substantial (though eroding) Arab majority - just as Brussels lies within a (more or less stabilised) Flanders territory. But beyond their major divide, both cities have extremely heterogeneous populations, ethnically, religiously and social-economically.

But with that, similarities seem more or less exhausted. The differences outweigh the similarities. They are obvious in three major fields:
1) the issue of community identities is posed in a very different, much harsher, form in Jerusalem than in Brussels;
2) the political struggle between both communities in Jerusalem (like in Brussels and other divided cities) reflects the struggle of two nations,
- this struggle is, much more so than in Belgium, (a federal state in which a broad consensus on the question of sovereignty has been achieved) an existential, zero-sum
conflict, in which each side denies the sovereign claims of the other;
- the extreme power asymmetry between Israel and the Palestinians prevents a quid pro quo arrangement such as in Brussels.
3) the political culture enabling peaceful and gradual conflict resolution in Brussels does not (yet) exist in Jerusalem.
4) Brussels is a modern metropolis with a substantial immigrant and foreign population and an international atmosphere. It represents the case of a city that is very modern in nearly all aspects - from its physical infrastructure to the demographic characteristics of its population, and from the relative anonymity of its social interaction, and the de-politicisation of its younger generation, to the recent (and problematic) presence in its midst of 'islands' of culturally alien new residents. In fact, the presence of 30% foreign residents has transformed Brussels into an international city.
Jerusalem by contrast has - in spite of its recent high-rises - essentially remained a conurbation of pre-modern communities, ridden by conflict and ways how not to solve it - sometimes older than the current communities themselves. It is a far more traditional city, with a much weaker infrastructure and economy, a mosaic, highly politicised, population structure consisting of close-knit and mutually hostile communities, many of whom maintain abundant social control over their members. It would probably be correct to describe Jerusalem as a transitional place between tradition and modernity.
5) Jerusalem has also a much more traumatic past than Brussels, notwithstanding the sometimes mitigating impact of the Islamic millet system. Not only has it historically gone through extremes of growth and depopulation, but its current Jewish majority has been marked by a background of victimisation in Europe.
6) There is no direct parallel in the Jerusalem/Israel-Palestine arena for the double majority syndrome that permitted a relatively elegant solution in Brussels. On the other hand, the Brussels and Belgian communities have experienced nothing like Israel's rejection by the Arab world and its prolonged state of war and siege by it, nor like the Palestinians' massive and prolonged victimisation at the hands of both Israel and the Arab 'brother states'. As a result, the factors of trauma, threat and security have grown into major components of the Israel-Palestinian confrontation overall, and of the Jerusalem complex in particular.

2. Historical aspects

Both Jerusalem and Brussels are old and well established cities, but Jerusalem has a much longer recorded history, going back to at least 1000 BC, while Brussels' pedigree can be traced to the Flemish Middle Ages. More important than age, is the time factor in the community conflicts. The community struggle in Brussels is not more than 200 years old (and in its more acute form even younger) whereas in Jerusalem, ethno-religious strife goes back to at least the Byzantine period. (Jewish sectarian struggles played a fatal role in undermining resistance against the Romans in 70 and 134 AC). Although different communities were involved in Jerusalem's community conflicts at different times, the pattern of intercommunity tension and violence, and the methods of coping with them, evince a strong continuity.
Majority-minority relations of the ethno-religious communities have formed a dominant feature of Jerusalem since its conquest by Islam. For a long time, Jerusalem retained its classical Middle Eastern city pattern of Muslims providing agricultural produce and unskilled labour, and Christians and Jews specialising in skilled crafts, commerce and finance. This specialisation reflected the balance of power between the groups. The administration was generally in hands of non-indigenous Muslim rulers. Jerusalem's national/religious communities have a tradition of mutual hatred and suspicion, which more than once had far-reaching effects on European politics. Most of the time, however, antagonisms were kept in check by (usually foreign) authorities, who from the 7th century to 1917 (except for the Crusader interlude) were beholden to Muslim norms of tolerance of subordinate but internally autonomous) Christian and Jewish minorities according to the millet system.

Jerusalem's history from the late 19th century through 1948 is largely the history of growing Jewish influx and expansion of the city outside its ancient walls. Jewish-Arab relations in Jerusalem remained tolerable under the British Mandate, although Jerusalem was the focus of some fierce anti-Zionist rioting in the 1930s. The war of 1948 led to the siege and eventual liberation of the Jews of West Jerusalem, but also to the fall of the Jewish Quarter of the Old City, and the dislodgement of most West Jerusalem Palestinians, and to the physical separation of the city in an Israeli and a Jordanian part.

Present-day Jerusalem is still imprinted by this experience of living as two completely divided cities from 1948 to 1967. A whole generation grew up without the presence of the other community. The trauma of the inaccessibility of the Old City, and the isolation and vulnerability of West Jerusalem continues to determine the Israeli taboo on 're-dividing Jerusalem'. Jerusalem's post-1967 history is that of enforced reunification, imposed coexistence, with their consequent patterns of ethnic interaction and compromise.

The prominence of Israel's claim to exclusive sovereignty over the whole of Jerusalem only became part of Israel's 'national consensus' after 1967. In parallel, the Palestinians' emphasis on regaining sovereignty over East Jerusalem has also increased.

In Jerusalem, groups came and went, then 'returned' and claimed pre-eminence. The Jewish presence in the city knew extreme fluctuations, in function of the city's political climate. The Christian population, probably a majority by late Roman times, was subject to ongoing attrition to the politically dominant Muslims. The city went through extremes of growth and depopulation. Growth took place both through osmosis with the periphery, and through immigration and political/demographic taking control. In a sense, everybody in Jerusalem is an immigrant, and legitimacy is largely fought out in terms of 'who was first?' The Palestinians claim uninterrupted continuity, although they have not been organised as a national political community until the 20th century. The Jewish hark back to antiquity and have maintained a tenuous physical link (as well as a strong subjective bond) throughout the centuries of their dispersion, and have constituted the city's absolute majority since the late 19th century.

Brussels never witnessed Jerusalem's violent intercommunity battles and chequered growth pattern. In Brussels, by and large the same groups continued to live, acquiring new languages, and developing ideologies around them. While its inhabitants changed their ethno-linguistic behaviour, growth was mainly through 'natural' urbanisation of its
periphery. The main form of community struggle in Brussels is through acculturation, i.e., one community expands by incorporating and assimilating the other. In Jerusalem, the main form of struggle is demographic-territorial, i.e., one community expands at the expense of the other. Jerusalem grows through osmosis with its periphery (as does Brussels) but even more through immigration and political-demographic processes: taking control of the land on the Jewish side, defending it by steadfastness and high birth-rates on the Arab side. In either case, one community expands by excluding the other from its territory: a clear-cut zero-sum conflict.

3. The nature of community identities

Unlike the Brussels inhabitants, Palestinian and Israeli Jerusalemites have no need to differentiate themselves from the other, as their difference is an a priori given. The two national communities in Jerusalem are much more sharply distinguished from each other and polarised against each other, than Flemings and francophones in Brussels. Not only are they more sharply divided, but the division in Jerusalem runs also much deeper. There is a high degree of congruence between linguistic (Hebrew-Arabic), religious (Muslim-Christian-Jewish), and ethnic (Israeli Jewish/Palestinian) dividing lines. As a result, there are religious-ethnic-linguistic amalgams that have crystallised in very distinct national identities. The absolute divisions are largely kept in place over the generations. There is no intermarriage and no individual crossover. Moreover, the near-complete residential segregation in Jerusalem manifests the desire of its inhabitants to avoid the other community. These forms of segregation do not exist in Brussels.

The coincidence between national affiliation and economic position is much more significant in Jerusalem than in Brussels (if it exists there at all). Palestinians are on average significantly poorer than Jewish Jerusalemites (although also Jewish Jerusalem is among Israel's destitute cities). Moreover, Palestinians are discriminated against in receiving municipal services. De facto Jerusalem is divided in two economic circuits with far less interaction and integration than in Brussels (as reflected in the existence of two prices and salaries levels).

Jerusalem has no overriding collective identity like the Belgian one. Instead, Jerusalem has a multiplicity of partly overlapping and partly mutually exclusive and competing identities. This is true for both Jewish and Arab Jerusalemites. Besides, Jerusalem communities are deeply divided among themselves, their juxtaposition creating the social ‘mosaic’ structure, e.g. Ultra-Orthodox vs. secular. Communities typically harbor a lot of prejudices about each other, and have little tradition of compromise and cooperation. In fact, although some communities are very old and have maintained a continuous presence in Jerusalem over centuries, many - particularly but not exclusively the Jewish ones - are relative newcomers.

The question how group identities are constituted, maintained and reproduced, is one of the central issues our research attempts to answer. In the following paragraphs, a few remarks are made concerning the relative weight of language, religion, and territory for collective identities in Jerusalem compared to Brussels.
4. Language

In Brussels, linguistic behaviour is the central axis by which the communities differentiate themselves from each other. The use of their two different languages is not just a signpost that tells belongingness to one community from that to the other, but expresses the very essence of each community's collective identity. Besides, use of language functions in Brussels as a vehicle for social-economic differentiation.

To a larger extent than in Brussels, in Jerusalem language is seen as an instrumental marker of identity rather than of a constitutive element of it. In fact, Jerusalem's Jewish population counts a strong Oriental-Jewish element: for many of the older generation, Arabic used to be their mother tongue. However, acculturation into Hebrew language has been a central nation-building strategy of the Zionist movement and the state of Israel. Nowadays, most Jewish Jerusalemites do not understand Arabic. The language question is less politically and emotionally charged in Jerusalem than in Brussels. Hebrew has become the language of one national group. It has not historically been imposed on the Arab-speakers as a more 'cultured' vehicle, nor has it been an instrument for individual or collective social advancement as was French in Belgium. Jewish-Arab antagonism is simply not first and foremost expressed through language.

In Jerusalem, the religious factor and the residency factor each, followed (to a much lesser extent) by physical characteristics, are more important community boundary markers than language.

5. Religion

Part of the saliency of the religion factor derives from Israel's very structure. Israel is a state of the Jewish people, and practices a form of positive discrimination that makes only Jews legally eligible for certain privileges (right of immigration and territorially defined residency prerogatives) and duties (enlistment). Doing away with this distinction would turn Israel from a Jewish state into the state of all its citizens, i.e. de facto into a bi-national state - an option rejected by the large majority of Israeli Jews. In Israel, being born into the Jewish faith (or converting to Judaism) is, legally and socially, the only criterion that distinguishes between people belonging to different national communities and hence allocates their differential rights and obligations. Formally, in other words, a religious criterion is used to distinguish between two national communities.

This has grave consequences. For one thing, in contrast to language, religion does not allow grey zones. One cannot be bi-religious in the sense that one can be bi-lingual.

For another, the religious factor, while conspicuous in Jerusalem's social fabric and physical architecture, has not the same immediacy as language. One does not recognize and pigeonhole somebody as belonging to a certain religion with the same ease as one does with somebody speaking a certain language. This is so because formal belonging to a certain religious community does not automatically entail personal piety and/or observance of that religion's respective commandments. As a matter of fact, nearly two thirds of Jerusalem's Jews are either secular or only partly observant. Differences in strictness of observance are also in evidence among Jerusalemite Sunni Muslims and Christians (the
latter internally divided among many denominations). One cannot tell someone's religion unless this transpires from specific dress, or other external features.

Unlike Israel, Palestinians tend not to use religious criteria for the definition of their national community, but rather familial and territorial ancestry. Thus in Jerusalem, Israelis and Palestinians use different yardsticks to determine who belongs to one's community and who does not.

The existence and pre-eminence of sectarian differences contributes to, and reproduces, the sharp dividing lines between the Jerusalem communities. It can be said that the great majority of the Palestinian population and a significant minority of the Jewish one, are not or only superficially touched by secularism. Among both Jews and Muslims, there has been a marked return to religious piety over the past decade or two. Moreover, as both Palestinians and Orthodox have a higher birth rate than secular Jews, Jerusalem's secular-Jewish population is declining to less than 50% of Jerusalem's population.

6. Residential segregation

The other identifying factor is territory, which is considered not only as a strategic asset but also as the manifestation of national identity. Jerusalem's boundaries have often changed, and in a metaphorical sense, maybe every Jew and Palestinian can consider himself at some level as a Jerusalemite. However, as a result of political vicissitudes, there is now - in a geographical and demographic sense - a clearly delineated population of Jerusalemites, defined by the municipal boundaries redrawn by Israel after the June 1967 war.

Residency sets Israelis and Palestinians clearly apart. All Jerusalem neighbourhoods are mono-national, with each identity group occupying a certain territory in the city. Territorial enclaving also marks off Jerusalem's various religious, ethnic, and socio-economic subcommunities (it also functions as a focus for environmental struggles). As a result of the Israeli-Palestinian conflict, ethnic residency patterns have drastically changed over the past 50 years. Due to the power asymmetry, this change has mainly taken the form of Israeli encroachment over what were formerly Arab-inhabited territories. This process continues, in the form of preventing or obstructing Palestinian construction, stimulating Palestinian outmigration, and building and expanding exclusively Jewish neighbourhoods, which encircle the remaining Palestinian areas.

The artificial separation of Jerusalem from its West Bank periphery weakens its link with the Palestinian hinterland, and plays a crucial role in the process of judaization. Tens of thousands of Palestinian Jerusalemites no longer reside in the city. On the other hand, tens of thousands of Israeli Jews have been brought into the city, and the process of transformation shows no sign of abating.

7. Inter-community contacts

Apart from the more obviously functional Jewish-Arab contacts on the workfloor, in public transportation and in hospitals - i.e. encounters of an economic or services-related nature - there is little social contact between Jerusalem's major conflicting communities,
who do not share a common history, a common sense of destiny, or a common identity. It is as if they are living in two different (though overlapping) cities. Partly as a result of the above-mentioned factors, and partly independently of it, there is a dearth of formal and informal encounters between Israelis and Palestinians in Jerusalem, that stands in marked contrast to the relative wealth and ease of Flemish-francophone interaction in Brussels, and forms an additional obstacle to easing community tensions.

The main cause is that while from the Israeli perspective, the city has been reunited and a situation of normalcy prevails, for the Palestinians Israel is illegally occupying East Jerusalem. As a result, intercommunity contact takes the form of an unequal exchange between occupier and occupied, yet this is officially denied by Israel. To this should be added that, while nearly all Palestinians reject Israel's occupation of East Jerusalem, in addition a minority of Palestinians finds the very existence of the state of Israel unacceptable (there is also a minority of Israeli Jews who in principle do not accept the presence of Arabs in a Jewish state).

For practical reasons, all kinds of spontaneous and ad hoc modus vivendi arrangements between Israelis and Palestinians have evolved in Jerusalem, from the administration of Holy Places to co-operation between professional organisations, and from Palestinians making use of Israeli health facilities to meetings between academics. The point is, however, that most of such intercommunity meetings lack legitimacy on the Arab side.3

'Secular Jerusalem' that provides the scarce points where both sides intermingle: the tayelet (boulevard), the Jerusalem Mall, etc. - although even here physical proximity does not easily lead to social interaction. Unless there will be a breakthrough in interreligious dialogue, it is secular Jerusalem that offers the best hopes for cross-cultural contacts, but these hopes are actually dwindling. Since the Intifada, the two Jerusalems live in separate universes, separated by a 'geography of fear'.4 Even after the onset of the Oslo peace process and a beginning of normalization, Israelis hardly venture in the Old City (except for the Jewish quarter) - although tourists do. Mutually acceptable meeting places for socialising hardly exist.

In spite of the growing political and demographic clout of the Ultra-Orthodox community, the cultural and café life of West Jerusalem has expanded over the past years and the city has shed its erstwhile provincialism; but Palestinians do not feel welcome to it. There is a dearth of specifically Arab evening entertainment. Palestinian East Jerusalem can be described as a ghost city after dark, with most Palestinians remaining at home with their families.

Jerusalem's education system is also completely segregated. Imposed assimilation was never part of Israeli policy. Education is obligatory and quasi-universal among Jerusalem Jews; among Palestinians, the higher incidence of dropouts and young drug addicts constitute an unfortunate fallout of the Intifada.

Social contacts between Jews and Arabs are minimal. Mixed marriages are exceedingly rare (and prohibited in the case of Muslim women with non-Muslim men) and are viewed negatively by all communities.

The voluntary refraining from socialising is most obvious between Jews and Arabs but not restricted to them alone. There is also very little contact between the secular and
Orthodox (haredi) Jewish Jerusalemites. In fact, the national-religious conflict between Israelis and Palestinians in Jerusalem is doubled by a less violent but no less fierce religious-lifestyle struggle within the Jewish community itself, between the secular and the Orthodox, who wish to impose compliance with Judaic precepts, and follow a conscious policy of non-mingling and territorial expansion.

All this stands in glaring contrast to the well-developed and lively cultural and social atmosphere of Brussels, which is completely non-segregated, and acts as a unifier where cultural commonalities are celebrated and community differences transcended.

In Jerusalem, the absence of a common Jerusalem identity is complemented by fully differentiated community sub-identities with hardly a trace of overlap (black or white, with nothing in between). The social spectrum in Brussels is far less polarised, where the main antagonism is ethno-linguistic with many intermediate grey shades. In brief, collective identity is 'not a problem' in Jerusalem, while in Brussels much energy is expended on deciding how to define who's Flemish and who francophone. But we may well regret the absence of a Jerusalem identity, as it would possibly act as centripetal factor.

8. The nature of community conflict

The political problems facing Brussels and Jerusalem are vastly different. Brussels is a (pacified) contested city, Jerusalem is a city in which liberation for one group signifies occupation and humiliation of the other.

The severity of the Jerusalem Question can be traced in part to its complexly fused religious-national symbolism. Jerusalem is much more charged with transcendental significance than Brussels. It is viewed as central and indispensable to the fulfillment of each group's national identity, and stands as a microcosm of the Israeli-Palestinian conflict as a whole, in a way Brussels is not. Flanders and Wallonia could continue to exist as self-contained national communities even without Brussels. Jerusalem by contrast is viewed by both contenders as the epitome of their national aspirations. In Brussels, once both contending communities were allocated 'their share of the pie', the acute phase of the conflict subsided. In Jerusalem, the conflict concerns indivisible goods. The very presence of the other is, for substantial constituencies on either side, a matter of tolerance rather than legitimacy. Hence, the conflict is perceived as sum-zero. In Jerusalem, due to the complexity of the issues, compromise solutions both are harder to develop, and harder to get accepted and implemented. The idea of compromise itself entails a far-reaching ideological concession which on either side touches a raw nerve of insecure collective identity.

The problem is compounded by Jerusalem's status as Holy City. Brussels completely lacks Jerusalem's polarising presence of three competing and mutually exclusive religious claims. Equally, there is nothing in Brussels that compares with the status of Holy Places that double as national symbols. Also the international factor has contrasting consequences in both cities. In Brussels, the presence of 300,000-odd foreigners and a plethora of international institutions has contradictory effects. On the one hand it strengthens the position of the francophones, on the other it creates prosperity from which both communities benefit; finally, the presence of large and culturally inassimilable Muslim and
African minorities may act to bring the two autochthonous Belgian communities nearer together.

In Jerusalem, the international presence is demographically much more limited. Yet as a Holy City, it is very much in the centre of attention of the international community. The Palestinian side has rather successfully tried to mobilise international opinion against Israeli policies in Jerusalem. However, it is questionable whether international involvement with Jerusalem has meaningfully contributed to lessen Jerusalem's community conflicts.

However, the real crux lies in the sovereignty issue, which is posed very differently in Jerusalem and in Brussels. Brussels' main problem seems to be fear of discrimination of Dutch-speakers, and the loss of Flemish cultural identity. But there is agreement over one basic question which is largely resolved: as long as Belgium remains in existence as a state, there is one sovereignty. All powers of communities, regions, and other organs derive in last instance from this source of authority. In practice, Brussels appears to keep the sovereignty issue somewhat in abeyance. Belgium's ethno-linguistic communities and economic regions have competing interests, but are in agreement over the basic parameters of their conflict. What remains, then, is the establishment of a system of practical rules over decision-taking and resources allocation, on the basis of equality and parity. The regulation and co-ordination of the different communities' conflicting interests has found expression in Belgium's ongoing constitutional development which leads up to federal powersharing.

In Jerusalem, by contrast, the main problem is the disempowerment of the Palestinians as a national community (although they have been offered enfranchisement as individuals), and the progressive loss of their political, economic, social as well as cultural foothold in Jerusalem. The sovereignty issue overshadows everything else. Communication between the two sides breaks down because there is no agreement over the basics: to whom does Jerusalem and its land belong? is there 'occupation', or 'liberation' and 'unification'? The outcome of this conflict posits (at least initially) a much starker choice between continued domination and secession/partition.

Israel officially annexed East Jerusalem in 1967 and in 1980, and views 'united Jerusalem' as the eternal and exclusive capital of the State of Israel and of the Jewish people. Experiments at devolution of authority to lower levels (the Kollek model) are carefully denuded of national connotations. Jerusalem boroughs do not enjoy even a shadow of the authority of Brussels municipalities. Attempts at borough-level self-rule (minhalot) have met with only limited success.

Palestinians have defied the legitimacy of Israeli actions from the very beginnings. Since the late 1980s, most Palestinians have agreed on the goal of partition, i.e. getting rid of Israeli occupation and having East Jerusalem as the capital of an independent Palestinian state. Likewise, while Israel denies Palestinian claims, it did accept in 1993 to discuss Jerusalem in the framework of the permanent status issues agreed in the Declaration of Principles. However, the two sides are still very far from agreement even on the basics. A number of model solutions for Jerusalem have over the years been developed. These are all variations on the theme of sovereignty, and can be subdivided in five categories, with possible combinations:

1) undivided exclusive Israeli sovereignty over the whole of Jerusalem (i.e. continuation of
2) completely split sovereignty with a return to the pre-June 1967 status quo ante, i.e. Israeli rule over West Jerusalem, and Palestinian rule over East Jerusalem;
3) scattered sovereignty, with Israel ruling Jerusalem neighbourhoods with a Jewish majority, and the Palestinians ruling neighbourhoods with an Arab majority; this can take either the form of one super-municipality, with decentralisation towards boroughs; or of two, closely co-operating municipalities;
4) completely joint sovereignty with Israel and the Palestinians ruling one united Jerusalem municipality in equality or parity.
5) internationalisation.

Two separate questions not dealt with here are: possible compensation for Palestinian territorial and other losses due to Israel's policies since 1967; and, a possible redrawing of Jerusalem's borders to include Palestinian villages left out in 1967.

An opinion poll among a representative sample of both Israeli and Palestinian populations, commissioned by IPCRI in 1995, found that
- about two thirds of Israelis favoured the first solution (the proportion was higher among Israeli Jerusalemites), but that there was a keen awareness that this solution would be unacceptable to Palestinians;
- a high proportion of Palestinians favoured the second solution;
- on both sides, ca. one-third favoured (or 'could live with') the third option. This solution has been developed at IPCRI by Gershon Baskin.5
- the last two options commanded very little support among both populations.

Unsurprisingly, then, there is a high coincidence between national affiliation and specific sets of political attitudes, i.e. in each national group there is a 'national consensus' about Jerusalem. Palestinians view Jerusalem as the capital of a future separate Palestinian state. Israelis consider it the eternal exclusive capital of the Jewish people. The consensus on each side is, however, narrower than anticipated, which leaves some room for optimism.

9. Conflict management and resolution

In Jerusalem, power is monopolised by one community (the Israeli Jews) to the exclusion of the other (Palestinian Arabs). On the national level, there is a less extreme but similarly tilted power imbalance between Israel and the Palestinians. Hence, the kind of Belgian trade-off whereby francophone predominance in Brussels could be mitigated because of Flemish predominance over the whole of Belgium, is not a possibility in Jerusalem. This asymmetry could only be offset if Israel were part of a larger Middle Eastern framework, e.g. in a powersharing federation with the Palestinian entity and Jordan, but this must meanwhile remain an unlikely scenario.

An important factor that allowed for community accommodation in Brussels is absent in Jerusalem. The political culture in Brussels permits and even facilitates compromise. Open violence is not acceptable, and attaining consensus is presupposed. This may have to do with the fact that Belgians have been less traumatized by their history than Jews and Arabs have and are used to live with compromises. Flemings and
francophones view each other as ‘erring’ members of their own community rather than as hostile foreigners: they are nationals speaking another language, not undesired foreigners, intruders or usurpers. The nearest equivalent would be how religious Jews view secular Jews, or how secular Jews would view Jewish converts to Christianity - not how Israelis and Palestinians view each other.

The political culture of Jerusalem, on the other hand, is imbued with extremism and delegitimises compromise. There is a background of fighting conflicts out in a violent way that leaves little latitude for the individual to ‘opt out’. This is exacerbated by religious exclusivism. Both Jewish and Islamic fundamentalism proscribes compromise.

10. Strategies

The extreme power asymmetry in Jerusalem precludes relatively smooth trade-offs as is the case in Belgium. This asymmetry has only become more marked over the past quarter of a century, as Israel succeeded in implementing its policies in Jerusalem, and was only weakly countered by Palestinian obstruction.

In fact, Palestinian strategies against Israeli attempts to expand and consolidate its control over all of Jerusalem, were by and large more reactive than proactive. Failing to impose secession, Palestinians developed a policy of endurance and - in spite of Israeli countermeasures - have grown at about the same rate as the Jewish population, so that the overall ratio has been maintained. The Palestinians also developed many institutions, yet failed to prevent Israel from taking over, not just because of Israel’s overwhelming strength, which has resulted in power asymmetry, but also because of their own divisions and passivity, which may have resulted from demoralization. Concrete failures include the weak functioning of Islamic institutions in Jerusalem, the absence of a Palestinian university, etc. The major failure of the Palestinians was perhaps due to not forming a clear alternative political centre. Taking care of the ‘Jerusalem issue’ was left to a variety of outside forces (Jordan, the Islamic Jerusalem Committee, the PLO...) which were unsuccessful. On the local level, resistance remained fragmented.

The Palestinians, in contrast to the Israelis, were not united. Riven by factional contradictions and lacking a clear and commonly accepted objective, Palestinian counterstrategies make therefore a chaotic impression. Palestinian élites were more often at loggerheads than acting in unison. Israel has exploited Palestinian internal weaknesses, and for a long time successfully prevented the crystallisation of a Palestinian political centre. Only recently has the Orient House emerged as a unifying ‘countervailing power’.

But Palestinians have meanwhile lost much ground (both literally and symbolically).6 Palestinians also weakened themselves by systematically boycotting Jerusalem municipal elections and institutions. Those who did not, found themselves menaced or ostracised. In practice, a variety of modus vivendi arrangements developed. Partly this took the form of Palestinians using Israeli institutions and rules to fight Israeli occupation, e.g. by bringing cases to the High Court of Justice. Partly, Palestinian individuals and firms worked with and through Israeli institutions, because they needed the Israeli government Ministries and/or Jerusalem municipality, for services, social benefits, and to prevent threats like house demolitions. The effect has been to create a grey zone of Palestinian ‘collaboration’
with Israeli authorities, in which many are directly or indirectly involved. By contrast, on
the official, declarative, level, the Palestinians remained frozen in a posture of
noncooperation which has precluded real Palestinian empowerment.

11. Applicability of the Brussels model to Jerusalem

A number of lessons can be drawn from the Brussels experience. First, that ‘submerged’
national communities such as the Dutch-speakers in Brussels, can emancipate themselves
and obtain an appreciable measure of self-determination, if they organise around common
goals and get sufficient support from co-nationals further afield. The Palestinian cause in
Jerusalem today is probably no worse off than was the Flemish one in Jerusalem in the
interwar era.

Secondly, it is possible to develop a joint, and enjoyable, multicultural living space
that spans the city's contrasting communities, and creates common interests and even
intimate social links. The precondition is a willingness on the part of the communities
involved to engage in both formal and informal contacts, based on roughly similar socio-
economic standards, the provision of services to each community, and mutual respect and
tolerance. Enforcing unequal communities in the straightjacket of an artificial ‘mosaic’,
such as has been the policy of the Jerusalem municipality, can probably not work in the
long run.

The most important lesson, however, is that the relative relaxation of community
tensions, which can be witnessed in Brussels over the past decade, comes about when the
city government is perceived by the city-dwellers as a neutral representative of all
communities, and not as being mobilised as a weapon in the hands of one group against
the other.

For Jerusalem, this means that - unless the city is to be redivided - it has to become
the ‘city of all its residents’. This holds true even though neither Israel nor a future
Palestinian state will necessarily become the ‘state of all their citizens’. I.e., the Jerusalem
question cannot even begin to be solve unless the question of sovereignty and equality is
squarely addressed.

It is hard to imagine any arrangement for Jerusalem to be stable unless it enjoys at least
tacit support from substantial segments of all populations involved. In the meantime, the
Palestinians have few options. On the virtue of the Brussels example of conflict resolution,
the main opportunities that suggest themselves are for Palestinian Jerusalemites:
- to continue organising themselves as an autonomous community.
- to consider trade-offs with Israel.
- to increase links with the Palestinian people, and with the rest of the Arab world.

However, this increasing Arab leverage must not drive Israel beyond its ‘exasperation
threshold’ or this strategy may backfire.

Moreover, Palestinians can increase public resonance with their demands - among
their own constituency, among Israelis, and in the international community - by focusing
on issues of democratisation and equalisation of services. Suspending their boycott and
participating in municipal elections is a major step that will require severe ideological
readjustment on the Palestinian side. No less important, it presupposes a shift from a
mainly reactive to a mainly proactive strategy. Indeed, Palestinian political participation in Jerusalem's public life may well bring about a completely new power balance in the municipality. Strange new coalitions may arise across national lines, e.g. on issues of religion vs. secularism. One third Palestinian councillors in City Hall can definitely break the deadlock. In parallel, the struggle against discrimination and for equal services may act as a lever uniting Jerusalemites from different communities in a struggle for common socio-economic interests.

However, while Jerusalem's populations can play a useful role in defusing the worst of the conflict, it is obvious that the course of the 'macro level' conflict between Israel and the Palestinians will far more determine Jerusalem's future than vice versa.

Beyond these general remarks, how applicable is the Brussels model to Jerusalem? Superficially, the contrasts between Jerusalem and Brussels seem to be so wide as to prevent any meaningful utilisation of the minutaie of the Brussels model for Jerusalem. Yet Brussels and Jerusalem belong to a common 'family' of divided cities. Precisely the fact that Brussels represents a relatively 'easier' case, has made it possible to negotiate there community coexistence arrangements and test them during a prolonged period of time. However, for Jerusalem, Brussels cannot but appear as a nearly utopian model. That is true both in terms of Brussels's practical bi-community arrangements (the model' or 'product') and in that of the conflict resolution procedures by which they were attained (the 'process'). While it would be nice for Jerusalem to emulate Brussels, the challenge seems daunting. Differences outweigh similarities. In Jerusalem, the overwhelming predominance of one national group over the other would pre-empt any compromise formula. Any useful discussion of elements of the Brussels model that might fit Jerusalem must therefore start from the assumption that the necessary political preconditions for implementing them, although currently nowhere in sight, will in future be somehow met.

On the strength of this hypothesis, then, it would appear to the author that Jerusalem could learn and adopt from the Brussels model elements in the following ten fields.

1. Expansion of the sovereignty concept. Voluntarily assumed mutual limitations on sovereignty, so that both sides will be empowered - although predictably unequally, with continued Israel predominance and with the Palestinians as a junior partner. Unless war breaks out and reshuffles the cards, the current balance of power does not seem to allow for a more even outcome. However, even an unequal partnership might still provide sufficient dynamism to subsequently evolve into greater equalisation.

2. Consociationalism. Sovereignty changes in the direction of some form of powersharing may be brought about 'clandestinely' - as happened in Brussels - if they can be cloaked in the legitimacy of each side. Very small but incrementally graded steps of sovereignty differentials can already make a difference and make the system mutually palatable. Brussels provides some interesting examples of concessions assumed by one community in favour of the other, which were of a primarily symbolical value. I.e. the 'cost' to the conceding community was small in practical terms, but they 'bought' it a surplus of goodwill. In intercommunity relations, gestures can be no less important than substance. Nor is the extreme complexity of the Brussels model - opaque no doubt to most Brussels
inhabitants themselves - necessarily a drawback.
3. Combining functional integration with cultural autonomy. This is the crux of the Brussels model. In Jerusalem, however, the combination of functional co-operation and cultural autonomy will in all probability not take the form of personalised matters but of neighbourhood-wise autonomy. If Jerusalem could agree on a similar mix of parity and majority rule as has functioned in Brussels over the past 8 years, then the Israel-Palestinian demographic ‘war of the womb’ (with its genocidal potential) may be neutralised.
4. The alarm bell procedure. Installing a procedure permitting enlarged or entrenched majorities in either community to block developments perceived as menacing that community’s (or the overall coexistence arrangement’s) vital interests, provides another means to compensate for and defuse demographic competition.
5. Creating trade-offs. The dispersion of decision taking and resources allocation power over many different levels (in Brussels: the federal state - region - community - and boroughs) must in the Israeli-Palestinian case be offset with sufficient integrative mechanisms to make the system work and prevent centrifugal implosion. In Jerusalem, both sides may need and be granted a prolonged stage of enhanced national sovereignty.
6. The freedom to vote for an electorate not ‘imprisoned’ a priori in ethnic constituencies. It is questionable whether imposed mono-community lists would be a good idea in Jerusalem.
7. Territory (re)shapes identity. There is a need for a clear geographical delimitation of Jerusalem, just as this was the case in Brussels. Indeed, there is a ‘Jerusalem oil spill’ that is no less threatening to the West-Bank Palestinians than Brussels’s was to the Flemings, and for the same reasons (although the motives for expansion differ in both cases). Guarantees for the Palestinian minority in Jerusalem might conceivably be traded off against guarantees for what remains a Jewish minority in the Greater Jerusalem Metropolitan area (Ma’aleh Adumim etc.)
8. Overlap of the Regional Council and the Community Councils. The fact that in Brussels, segments of the same body sit in different capacities depending on their composition, may have applicability to Jerusalem. In case of a territorial reshaping of Jerusalem into one integrated Jerusalem Region with clear borders, as was argued in the previous item, such a duplication could solve the dilemma whether Jerusalem should be administered by two municipalities or by one regional super-municipality.
9. A common iconography. The lack of a shared symbolical field between Jews and Arabs was pointed out as a crucial element preventing stable and mutually acceptable community coexistence. Jerusalem needs to weaken and eventually melt down the sectarian barriers between its communities by establishing a joint social-cultural sphere. Obviously we are talking here of long term developments that are nonetheless absolutely essential. Language courses, educational encounters, cultural contacts on both the elite and the popular levels, etc., may help to create a nonviolent culture of peace, a desire to live together, and ultimately, a Jerusalem identity.
10. Gradualism. Just as Belgium went through a multi-reform process of federalization, Israel is and Palestinians can devise a solution for Jerusalem that will have built-in mechanisms for ulterior non-violent change. It is important to realise that solutions need time to take root, and must therefore be provided with sufficient anchoring, institutionally
and otherwise. On the other hand, no specific arrangements ought to be cast in iron.

12. Process

The lessons to be drawn from an evaluation of the Brussels situation may be pertinent to the Jerusalem question on two levels: that of the ‘process’ of conciliation between the communities in conflict, and that of the ‘product’, i.e. the concrete set of arrangements governing their relations that is arrived at. Put differently, Brussels may be relevant to Jerusalem in the period prior to an Israeli-Palestinian political settlement over the city, and after it: prior to it, by analyzing how the Brussels ‘methodology’ can help craft interim agreements for Jerusalem; and afterwards, by analysing how the Brussels system of checks and balances can inspire Jerusalem to develop its own judicious combination of partition and partnership.

The following remarks can be ventured regarding the Brussels conflict management and conflict resolution methodology.

The ‘Brussels way’ of conflict resolution apparently rests on the following three pillars: 1) non-violence; 2) give-and-take; 3) gradualism. All of these would have implications for the Jerusalem case.

12.1. Non-violence is built into Belgian political culture

It is the result of historical processes - although Belgium's more remote past was as violent as that of any state. The basic elements are: (a) a culture of tolerance which goes back to Erasmus and the Renaissance, and which has progressively been introduced and reproduced through the educational and media apparatuses; (b) rule by consent of the ruled through a system of democratic representation, which has created a wide base of state legitimacy.

Brussels has a vigorous civil society, not nearly as segregated along community lines as it would appear: cf. its network of media, social organisations, educational endeavours etc. All feature a lot of intercommunity contacts, which are bolstered by intensive social contacts. As a matter of fact, one main thrust of Flemish efforts in Brussels has been to create separate Flemish networks where none existed, i.e. there was a 'surplus' of (unequal) integration.

These elements are glaringly absent in the Jerusalem case - at least as regards the Israeli-Palestinian interface. In Jerusalem there is too much segregation and not enough cross cultural contacts on a basis of equality. It is suggested here that any political solution should take them into account. Enfranchising East Jerusalem Palestinians will not be sufficient in itself; in view of the structural minority status of Arabs in Israel. The other, and probably better, option is to empower them as citizens of a future Palestinian state. Any mutually acceptable solution would entail granting the Palestinians some form of political presence in Jerusalem.

A non-violent 'culture of peace' is obviously a long term endeavour, but a start can certainly already be made, provided sufficient political will can be garnered. While foreign
cultural patterns are of course not readily copiable, initial efforts can certainly be undertaken. Two major axes of efforts should be: a) democratisation of Palestinian Jerusalemite social and political life, and b) economic progress so that the gap between both communities will become less extreme, and both will have a lot to lose.

12.2. Bargaining

Give-and-take presupposes both sides have something to give. The extreme power asymmetry, enshrined in the Oslo accords, results in the Palestinian side having little to give but legitimacy, and reduces it to playing out its nuisance factor. The Palestinians would have more leverage if a) they trade off concessions concerning other final status issues, e.g. in the field of settlements, borders, or the refugees' Right of Return, against advantages in Jerusalem; or b) the Arab side would operate in a more united way. The first strategy can be applied in the upcoming final status negotiations. The prospects for the second are not good, and moreover they would only reap the desired result if Arab power were to be applied in non-threatening, non-military way - in other words, by integrating Israel in the Middle East. While this project need not be utopian, it would clearly be the result of earlier political settlements and rapprochement, and not the other way around. For Jerusalem a mutually acceptable solution, then, must be found that can function before this 'New Middle East' comes to fruition.

12.3. Gradualism

The current Brussels arrangements came about after an elaborate series of earlier constitutional experiments that involved not just the Brussels inhabitants but all Belgians in a common, vaguely consensual project of federalization: increasing self-government for the communities and regions, but without completely sacrificing Belgian unity and sovereignty. This evolution has, moreover, been built into the process of federalisation on the European level. It will be interesting to watch how the Brussels model, which has been predicated on the delicate balance between Belgium's communities, fares as national communities such as Flemings and Belgian francophones more and more dissolve into the larger European framework. Can the Brussels model subsist if Belgium completely federalises?

For Jerusalem, the implication should be that a solution has to be evolved that will not be cast in iron, but will hold good for a generation or two, with provisions for further changes as the Middle Eastern situation evolves. A careful study not just of the Brussels model as it is now, but also of how it has evolved out of preceding arrangements, could be helpful in this regard.

13. Product

The above suggests that the 'Brussels model' can have limited but real application in the Jerusalem situation as it currently is, in the period leading up to a final status arrangement. But its usefulness may even increase and become more relevant at a later
stage, after the sovereignty question will be satisfied. It must indeed be clear that one cannot even begin to solve the Jerusalem question (as opposed to short term stopgap measures) unless the sovereignty and equality question are faced. This issue overrides all others; for reasons explained above, it was never in such bitter terms in Brussels.

Any mutually acceptable solution for Jerusalem presupposes that the sovereignty question be resolved; this demands recognition of two sovereignties, either unrestrained and territorially delimited, or de-emphasised and overlapping. In other words, for the Jerusalem issue to be resolved, we may have to go back to pre-Absolutist notions of overlapping but incomplete jurisdictions. Such a powersharing model has been elaborated for Brussels.

The Brussels experience also suggests that sovereignty can be functionally differentiated.

However, in view of Jerusalem's residential segregation, it is an open question whether the Brussels system of differentiating functional/territorial from social-identity issues - which flows from the territorial mixture of ethno-linguistic groups within Brussels - is relevant to Jerusalem, with its ethnic homogeneity per neighbourhood. Residential segregation in Jerusalem may make possible a solution based on neighbourhood autonomy. Jerusalem, which is still administered as a unified city, should study Brussels' devolution of authority to its 19 municipalities. Moreover, no solution for Jerusalem will hold for long if it does not take into account the hinterland, with its mixed population of Arab villagers and Jewish settlers. These groups will in future need to co-operate in practical matters such as roads, water, sewage disposal, etc. Here, too, the Brussels model, which from the outset was conceptualised as a metropolitan model, could provide valuable lessons.

Lastly, it would be very useful to study the Belgian modes of constitutional entrenchment, whereby the basic rights of all communities are protected by making any alterations in the system conditional on absolute, or even reinforced majorities in favour of it in each community.

The Brussels model of partnership and powersharing between two communities with contrasting interests, is built on the assumption of a consensual principle of sovereignty. The absence of such a consensus is, precisely, at the heart of the Jerusalem problem. The Jerusalem question cannot be solved without recognising Palestinian as well as Israeli sovereignty over Jerusalem, or parts of it. This may entail changes in Jerusalem's municipal boundaries, and it will certainly imply some form of administrative, if not physical, re-division of Jerusalem. However, this partition cannot be but relative. A variety of factors will force Jerusalemites into co-operation and co-ordination: the presence in the city of emotionally charged but indivisible resources that are claimed by both parties, the need to preserve the city's essential unity, and its historical, religious, architectural and environmental values; and the need to co-ordinate the delivery of services to its residents. When Jerusalem approaches this 'post-settlement' point, Brussels may provide again an inspiring example.
Notes

1 I am grateful to Gershon Baskin and Shlomo Hasson for helpful comments.


5 Jerusalem Poll. Baskin, publications on Jerusalem.

CONCLUDING REMARKS:

CONFLICT AND COMPROMISE IN JERUSALEM

- Learning from the Brussels experience? 1 -

Anja Detant (VUB)

One of the aims of this report has been to examine in detail the social, political and institutional reality in Brussels and Jerusalem and to go beyond mainstream definitions of the conflict on both sides, to more fundamental concerns and motivations of the parties involved. What we tried to do, was to rethink the issues at stake and to demystify them from the political rhetoric that so often has seemed to muddle a more profound understanding of a problem. To understand the crux of the problem meant exploring both sides' reality, trying to understand their divergent perceptions and to evaluate the consequences for political action. Only then can reflecting on possibilities for compromise and solution be relevant.

From the wide range of contributions and opinions included in this report, it appears that the interdisciplinary and comparative approach provoked a number of discussions concerning how to define and frame the main conflict issues and what to retain from the Brussels experience of 'cohabitation', in reconsidering the Jerusalem question. Although discussions were in many ways inconclusive and there was no unanimity among the researchers as to the question of how to proceed from now on, it is possible to distil out of the Brussels experience several elements that might be of use in managing conflict in Jerusalem.

However limited comparability between both cases might be, Brussels and Jerusalem indeed share a number of essential features that are typical of 'plural' urban societies. The conflict is characterised whether by a difficult consensus or the absence of consensus regarding political power sharing, and is furthermore related to issues such as sovereignty and identity. In addition, both cases are the reflection of macro-scale statewide conflicts and can be considered both as a microcosm of a wider community conflict and as repositories of specific conflicts on a local level. However, in the Brussels case power relations between both communities are asymmetrical to power relations on a national level. The francophone majority in Brussels is a minority in Belgium and vice versa. This situation offered large possibilities for bargaining and an eventual compromise.

In the Jerusalem case, power relations between Israelis and Palestinians are on the contrary a small scale replica of the power relations on a broader 'inter-state' level. On both levels, the Palestinians find themselves in a situation of inequality and dependency. Their overall position in negotiations is very weak. Israeli-Palestinian relations are thus characterised by basic inequality, divisions are far more clear-cut than in the Brussels case. The dominant Jewish majority clearly benefits from both legal-political power and
economic supremacy; the boundaries between Israelis and Palestinians are apparently fixed and impermeable. This is a fundamental difference that must be taken into account.

Another element that renders comparison difficult, is the fact that the historical and political backgrounds, the actual circumstances and the intensity of the conflict are very different. Yet, like Jerusalem, Brussels has a highly symbolic role in the struggle between the different communities in Belgium. Being the capital of a bilingual state and of the Flemish and francophone Community in Belgium, the area is at the focus of communal divisions, that are expressed in ongoing antagonism and conflict. Without any doubt, Brussels is, at the same time, a uniting and a dividing factor within the Belgian political structure. However, Brussels certainly is a mild case of ‘polarisation’ and the Brussels picture is far more ambiguous than that of a major cleavage between Flemings and Francophones. In fact, other cross-cutting cleavages in society mitigated the impact of communitarian polarisation. Besides, there is no clear differentiating line between both communities on the level of the population. Boundaries between them are rather fluid and vague. Belonging to one of the two communities is not an official and registered choice, neither a permanent and homogeneous choice. As has been argued in this volume, social reality shows a much more moving and blurred picture than political and institutional realities. In Jerusalem, the picture is far more clear cut. The multiple grey zones that can be identified in Brussels and the possibilities of mixed identities are in no way part of reality in the Holy City. The segregation between Israelis and Palestinians determines almost all aspects of life and clearly limits the application of some of the mechanisms that were successful in the Brussels case. Nevertheless, Brussels might be a valuable source of inspiration.

1. Defining the conflict

Considering the multi-dimensional character of the Jerusalem and Brussels question, defining the problem is - in all its aspects - a crucial issue. Firstly, in both cases the definition of the disputed area itself is problematic. The opposing parties do not have the same city in mind when respectively referring to Brussels and to Jerusalem. Clearly, each party claims a different territorial area, which they call Jerusalem/Brussels. For Israelis, Jerusalem comprises the municipal boundaries of the city, as defined in June 1967. The Palestinians on the contrary have a much more restricted territory in mind: one that coincides grosso modo with the Jerusalem municipality borders before ’67.

Secondly, both parties sustain a divergent perception over the main issues involved in the conflict. Jerusalem is an important symbol of identity and nationhood for both Israelis and Palestinians. They both regard the Holy City as an integral part of their people’s heritage. As a consequence, the aspirations of both parties are perceived in zero-sum terms, which renders bargaining all the more difficult. Since Jerusalem has been defined as an indivisible good, rational discussion and reflection is difficult. Moreover, it seems to make the problem a priori insoluble. In fact, several factors interrelate and shape the Israeli-Palestinian struggle over Jerusalem as a struggle over sovereignty and cultural space, a problem of recognition, a question of control over space. The issue of territory is crucial in regards to the question
of sovereignty and the link between both cannot be underestimated. The central question is who controls which piece of territory and who has sovereignty where. Since the link between territory and sovereignty is one of the crucial components of the Jerusalem problem, and the situation on the ground is being changed every day, the key question is how to design options within a dynamic context. ‘Changes on the ground’ daily work against the Palestinian role and the Palestinian position in Jerusalem, and thus against a workable solution in Jerusalem. Only a stop of the Israeli settlement policy and a mutually accepted geographical delimitation would allow to offset the threat of the expansion of Jewish Jerusalem to the Palestinian West Bank population. Since the delimitation involves major issues of control and will influence the power of balance between both population groups in the city, this proves not to be easy. The dynamics of the situation dictates an urgency of the highest order. At the same time however, the Jerusalem question requires patience. This paradox clearly complicates the situation.6

The problem of definition and perception is not limited to the Jerusalem case. For years, divergent perceptions and interpretations of the Brussels problem have been an obstacle in Belgian political life. A consensus was lacking over whether Brussels should be a third region in a federalised state structure, or, being the capital, a meeting place for the two communities. The same was true concerning the geographical delimitation of the bilingual area. A definite delimitation of the Brussels Region has been one of the major issues for the last three decades at least. On the Flemish side there was a strong demand to fix the boundaries of the bilingual area once and for all, in order to maximally guarantee the linguistic homogeneity of the surrounding areas. The francophones clearly had and still have another view on this problem and demanded respect for the sociological reality of frenchification, linking the periphery to the capital area one way or another. The institutional model that evolved over the years by trial and error, combined both apparently irreconcilable viewpoints. Brussels did become a third region, but a region with constitutionally and permanently fixed boundaries.7 Nevertheless, though legally settled, the issue remains on the political agenda and discussions over the geographical delimitation of Brussels and the status of the Capital Region regularly stirs up political emotions. As to the crux of the problem, it should be recognised that the community struggle in Brussels is not only a problem of linguistic tension between two different communities, living together on the same territory. The reality of mixed ethno-linguistic interaction can be defined as a more complex matter, determined by the interaction of political, economic and social phenomena. It is true that the language conflict was and still is often used to cover up for more substantial struggles for power and territory in the Belgian state. Since the political options regarding socio-economic policy in Flanders and Wallonia largely differ, both try to transfer as many competencies and means as possible from the federal level to the Regions and the Communities whenever this is in their own advantage. Brussels is an important factor, since this third region can influence the balance of power between Flanders and Wallonia in favour of one or the other.
2. Brussels as a source of inspiration?

The relevance of the Brussels experience is not to be found in an eventual possibility to transpose the institutional system to a radically different context. Studying the Brussels system in relation to the Jerusalem question can only be relevant when it is approached as a generic model, taking the structural and legal factors out of the Belgian context, revealing the meaning of these factors in the process of managing political conflict. In other words, while it cannot be assumed that direct analogies can be deduced from comparing two unique cases, comparison on a more abstract, theoretical level offers useful insights. The value of the project is thus to be found in the results of the study concerning those basic mechanisms, attitudes, institutional options and resources that can play a part in the process of conflict management. Both on the level of the methodology of conciliation between two communities in conflict as on the practical level, i.e. the concrete set of arrangements produced, Brussels can be a source of inspiration to manage the Jerusalem question.

As illustrated by the complex and multilayered Brussels institutional model, there can be no simple solutions for complicated problems like that of Jerusalem. Many propositions for the settlement of the Jerusalem issue have been developed over the years, with one thing in common: they were all rejected, be it by one or the other or by both parties. We may presume that the eventual solution for Jerusalem will be one that goes through stages, formulating temporary and evolving answers to the needs and aspirations of Israelis and Palestinians. The Jewish majority in Jerusalem will have to understand that in the long run, it is in its self-interest to go for a solution which is less than totally satisfactory for one side and unacceptable for the other side. The ultimate answer will have to be a win-win solution. The Brussels’ experience can be relevant, since it shows that framing the conflict in absolute terms is a non-starter for discussion.

A first thing to be remembered is the related character of the local and national or inter-state level. Several contributions have shown that political life in Brussels cannot be approached as such. If one studies the attainment and the practice of the compromise solution for Brussels, it is impossible to isolate the subject from an analysis of the general features of the Belgian political system. In many respects, Brussels mirrors, albeit in a very specific way, a number of appeasement techniques which have been or still are used in the major cleavages dividing the Belgian res publica.

It is important to keep in mind the relevance of the overall conflictual framework in the quest for a solution of more local issues such as Jerusalem. It is indeed obvious that the Jerusalem problem cannot be detached from the general conflict between Israel and the Palestinians. It is at the core of the general discussion upon sovereignty and self-determination for the Palestinians and recognition and security for Israel. However, considering the multi-faceted nature of the Jerusalem problem, it is doubtful that a single, all inclusive solution of the conflict can be elaborated. Such a formula should not only offer satisfactory answers to all the controversial issues, it will also have to satisfy demands and aspirations that have continuously been defined in zero-sum terms. Reframing the most difficult issue of ‘sovereignty’ into the more pragmatic concept of ‘control’, might open up possibilities for a settlement of the dispute. However, the empowerment of the
Palestinians in terms of sovereignty seems to be a sine qua non to the resolution of the Israeli-Palestinian conflict. It is very unlikely that Palestinians can accept less than sovereignty, for only a sovereign Palestinian state is able to enter into the discussion with Israel as an equal partner. Since it has been demonstrated that a dogmatic approach of the sovereignty concept does not correspond to reality - no single state can be qualified in terms of absolute sovereignty - the concept of functional sovereignty or partial sovereignty - Gershon Baskin proposed the concept of "trans-consensual sovereignty" - might introduce some satisfaction to the demands of the conflicting parties, both in political and in practical terms. Other authors have proposed to replace the sovereignty concept with the more versatile concept of 'control' or 'exercising power'. A more pragmatic approach in terms of 'control' would allow to formulate at least partial answers to certain components of the conflict in the Holy City and to establish a basis for further discussion.

The Belgian experience proves that a more flexible interpretation of the sovereignty concept allows for power-sharing at different levels. Sovereignty can be limited, multi-layered and scattered, both in terms of regionally defined or community bound matters. In Belgium, the federal authorities, the Regions, the Communities and the municipalities, all exert some degree of control. In Jerusalem, the general principle of power-sharing and empowering the Palestinians is on the order of the day. Maybe the Brussels example can be a source of inspiration. Without dividing a city one wants to keep officially united, one might agree to accept some 'control' of both communities in Jerusalem. The question is: control over what and to what degree? Unlike the complicated system of regional and person-related matters in Brussels, the ethnically homogeneous neighbourhoods in Jerusalem point to the possibility of neighbourhood autonomy for respectively Israelis and Palestinians, where they make up a demographic majority. In Jerusalem there are likely to be clear lines demarcating territory which falls under the separate jurisdiction of one or the other community. At the same time, numerous functions that relate to infrastructure, regional planning, ecology, etc. will need to be based on power-sharing between the communities. This may require the establishment of joint bodies which will engage in joint planning and administer joint services, similar to the regional structures that exist in Brussels. Within a regional power-sharing mechanism in Jerusalem, both sides will have to agree to make decisions based on parity. A system whereby one side continually imposes its will on the other, will not be workable.

In the Brussels context, several mechanisms prevent one side from making decisions for and against the interest of the other. The institutional system in Brussels is based on a clear division of responsibilities or competencies which provide the communities with a sense of relative control over their vital interests. Furthermore, the consociational mode of decision-making is quite successful in establishing a balanced power relation between both communities. Not only is the system crucially based on power-sharing and consensual decision-making over regional matters, several mechanisms have been installed to prevent a dominant position of the majoritarian community in Brussels as well. The majority has agreed to grant the minority certain guarantees, in exchange for concessions and balanced power relations on a federal level. In other words, the Brussels model is an example of a clear and complex division of functions over various decision-making bodies, and of a
system of clearly defined mutual limitations of power. Even though the context is a very
different one, this experience is meaningful for Jerusalem. The model of Brussels with its
complex understandings based on parity, mutuality, reciprocity and parallel limitations can
be useful, primarily with regard to accepted limitations of sovereignty and defined
competencies afforded to each community.

However, what eventually can be taken from the institutional system of Brussels, is
not the concrete set of arrangements adopted as such, but the creative and inventive
thinking that resulted in combining apparently irreconcilable demands. Brussels shows
that it is possible to be a multiple capital. It also proves that, in a context of ‘ethno-
national’ conflict, it is possible to overcome administrative difficulties in governing a city
that should not be divided but unified. Presuming that Israelis and Palestinians want to
sustain Jerusalem as an open city, while in the mean time there is a clear willingness on
both sides for a high degree of segregation and sovereignty, several options for power
division and sovereignty sharing within a physically united urban area are possible.
Differentiating between regional and community matters and accepting to attribute certain
degrees of control over certain matters to different institutional bodies, created a broader
scope for discussion and bargaining in Brussels. The same may be held true for Jerusalem.
Israelis and Palestinians may want to approach the Jerusalem question from a functional
point of view, guaranteeing the daily administration of the city, yet at the same time trying
to maintain the characteristics of the East and West sides. This implies that both sides
would withhold to disturb the balance on a non-parity level, accepting the facts and
working out solutions that are based on parity in the definition of the competencies
between the communities.

Still, in relation to the Jerusalem question, the Brussels system seems to be relevant
rather as a post-solution model than as an ante-solution source of inspiration. Before
discussions over power-sharing in Jerusalem, institutional modalities, co-operation and
protective mechanism become possible, other issues in the Israel-Palestine conflict should
be settled. Functional integration and national or cultural autonomy in Jerusalem cannot
be envisaged as long as both parties do not fully recognise one another’s existence and as
long as Palestinians are denied sovereignty over their territory, including sovereignty for
the Palestinians in Jerusalem. Essentially what has been proposed thus far is restricting
Palestinian control and jurisdiction, defining the Palestinian entity in such a way that it is
not fully sovereign. Only when both parties equally enjoy some degree of sovereignty and
one party is not dependent on decisions of the other, negotiations over power-sharing and
separate sovereignty in Jerusalem can be meaningful.

The greatest challenge facing Israel and the Palestinians in Jerusalem is how to
develop a workable model that will allow two sovereign states, Israel and Palestine, to
both hold some sovereignty in Jerusalem without splitting the city into two separate and
physically divided entities. Shared sovereignty might be an option that answers the
sovereignty question and the need for co-operation. Such an option fosters integration
and recognises difference, similar to what the Brussels system offers. But bringing about
any workable system for Jerusalem first requires the political will to negotiate.

The Brussels experience shows that an effective way to look for solutions of ‘non-
debatable’ issues, is one that is based on two fundamental ideas: one of gradualism and
one of trade-offs. The process of conflict management was one guided by incrementalism, finding solutions first on the easy parts of the conflict, gradually moving towards a global package deal that in the long-term satisfies both parties as much as possible. Whether such an approach is a realistic option in the Jerusalem case, is a matter of discussion. If Jerusalem is the key to an over-all solution, as some think, then putting off this discussion until last, is not a wise thing to do. Others argue that it is more efficient to try and solve more easy issues first, creating a climate of trust and mutual understanding, that will later on allow to deal with the more critical issues.

The question of Jerusalem’s status has long been evaded, in order not to hamper the Oslo peace negotiations, since it is considered to be one of the politically most delicate and disputed issues. Instead of a comprehensive approach that tackles at the same time all the key questions of the conflict, Israelis and Palestinians agreed to work out the problems in a gradual way, putting Jerusalem aside until the final-status negotiations. Delaying this issue any further is no longer possible. But how to make some progress and conciliate radically opposed viewpoints and interests? Without any doubt, a step-by-step approach, linking different issues that are important to both sides (Jerusalem, the question of the borders, the settlements, the refugees’ right of return, …), can offer more or less acceptable answers to the global conflict. Certain Israeli compromises on one issue could allow for certain Palestinian compromises on a different issue. To name but one thing, it is not inconceivable that a delimitation of Jerusalem can be accepted by both parties if guarantees for the protection of the rights of the Palestinian minority in Jerusalem can be traded off for protection of the Jewish residents beyond the determined area of Jerusalem in the West Bank.

The technique of gradualism and trade-offs clearly worked in the Belgian context. The current Brussels arrangements came about after an elaborate series of earlier constitutional experiments, that resulted in a vague consensual project of federalisation: increasing autonomy for the communities and the regions, within the framework of a Belgian decentralised state structure. The Brussels institutional model was eventually worked out due to an agreement that links issues and makes trade-offs between conflicting claims and interests: the status of the Brussels capital area was linked to the issue of geographic delimitation; the protection mechanisms for the Flemish minority in Brussels were obtained in return for certain rights (so called ‘facilities’) to the francophones in some surrounding municipalities belonging to Flanders and a stronger francophone power position on the national level.

Obviously, the situation in Jerusalem and the intensity of the Israelo-Palestinian conflict are very different. There is a strong sense of fear that one side will take unilateral decisions that will jeopardise the rights and the sovereignty of the other side. Moreover, political culture in Jerusalem and Brussels are not comparable. The Brussels model is based on a high level of tolerance and a political culture of compromise. These elements lack in the context of Jerusalem. Therefore, any model will have to be extremely explicit and elaborate to provide enough guarantees for the protection of the vital and perceived interests of both sides. As long as these are defined in absolute terms, it is unlikely to find a way out of the impasse.
However, the question of urgency seems pertinent. The situation is being changed every day by the strongest actor in the conflict. The on-going demographic war and the politics of establishing facts on the ground, urges for a quick and efficient ‘settlement’, that more or less satisfies all parties in equal ways. Separating between dimensions of the conflict will make temporary and partial solutions more plausible. Pragmatism can offer perspectives to reach a first agreement that boils down to functional integration and ‘national’ and cultural separation in Jerusalem. One could begin to explore the construction of separate and interactive institutions in civil society, that will testify that the only way of sharing Jerusalem is by respecting each other and by combining the desire for autonomy with the requirement of co-operation. In spite of opposing positions some practical arrangements have already been worked out by way of ‘bypassing’ political principles or accepting ad-hoc solutions. More explicit terms of compromise might be deduced from this day-to-day practice. The long-term process itself can of course never be predicted. Since the situation of confrontation itself is a very dynamic one, solutions that seem appropriate today, might need readjustment in the immediate future.

What the actual outcome of negotiations over Jerusalem will look like and whether some of the elements that worked in Brussels will prove to be relevant in Jerusalem, remains to be seen. The successful formula will undoubtedly be a complicated and innovative one, whereby Brussels might be a source of inspiration. Clearly, the Brussels model shows one thing: unless the minimal needs and desires of both sides are reasonably satisfied, a stable and lasting resolution of the conflict is impossible. In any case, only a negotiated outcome can in the long run be of avail to the conflict. As the Israeli side holds almost all of the assets that will be negotiated upon, without any doubt, the main challenge for Israel in the negotiations over Jerusalem will be how to translate political concessions into strategic gains and how to bring about a strong popular support for them.

Notes

1 This text has been largely inspired by multiple interventions at the Brussels seminar, 18-20 December 1996.
2 Part of the vulnerability of the Palestinians stems from their economic situation. As long as the Palestinian economy is so largely dependent upon Israel, a truly endurable settlement will be difficult. Closing off the Autonomous Territories is a powerful Israeli weapon to pressure Palestinian leaders and certainly is a serious constraint to Palestinian control and autonomy/sovereignty. To prevent political instability in the future Palestinian state stemming from economic dependency and deprivation, commitments in financial and economic matters are highly required.
3 Brussels is also capital of the French community, but not of the Walloon region. While on the Flemish side the communitary bond between Flanders and the Flemish Community in Brussels is stressed, Wallonia and the Brussels’ Francophones rejected such a link, opting for the primacy of the regions.
4 There is no such notion as sub-nationality in Brussels.
5 The same was true in the Brussels’ case in the 1960’s. The conflict flared up and resulted in massive Flemish demonstrations in Brussels against Frenchification and territorial ‘annexation’. The
immediate result of these demonstrations was a strong counter-mobilisation on the Francophone side,
and a radicalisation of positions as reflected in the offspring of the Front Démocratique des
Francophones (FDF).
5 N. Chazan, ‘Jerusalem: the search for solutions’. In: J. Kotek e.a. (eds.), Brussels and Jerusalem:
7 At the same time, some ‘corrections’ were introduced to the principle of territorial homogeneity of
Flanders and Wallonia. In some municipalities around Brussels (faciliteitengemeenten) and near the
language border (taalgrensgemeenten), the linguistic minority was granted certain rights.

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